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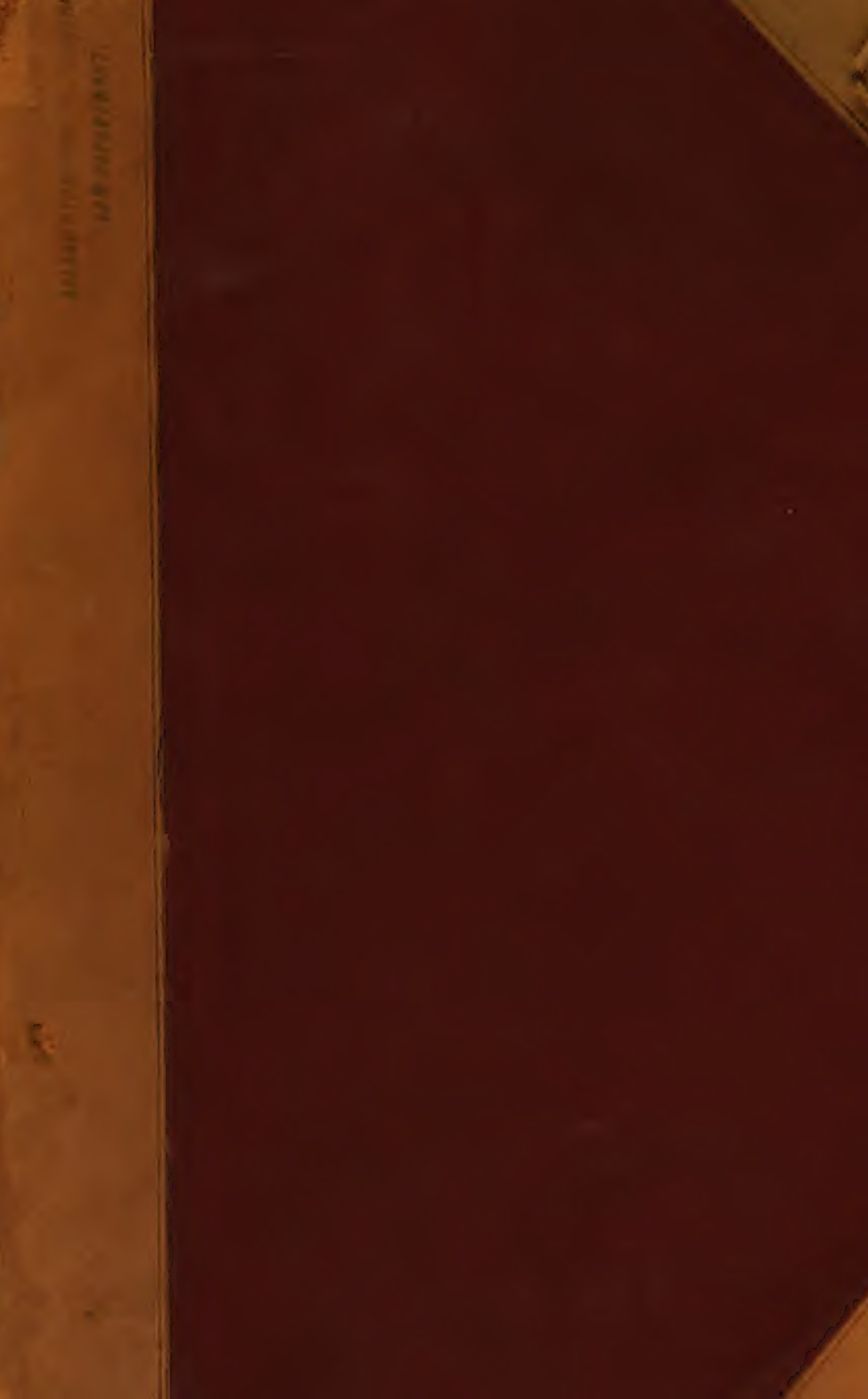
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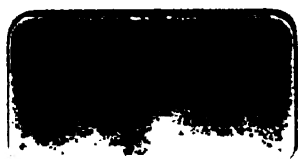
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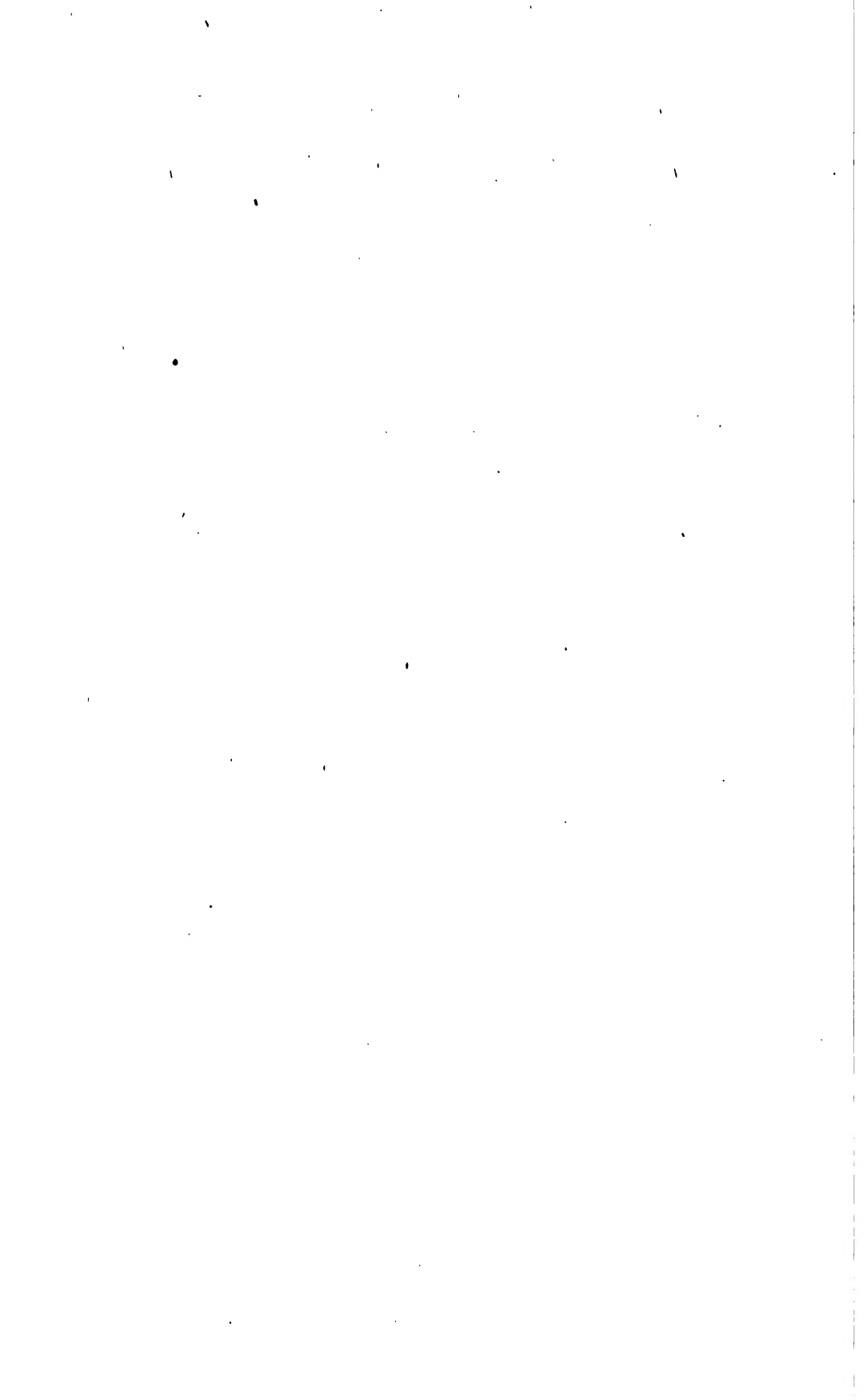
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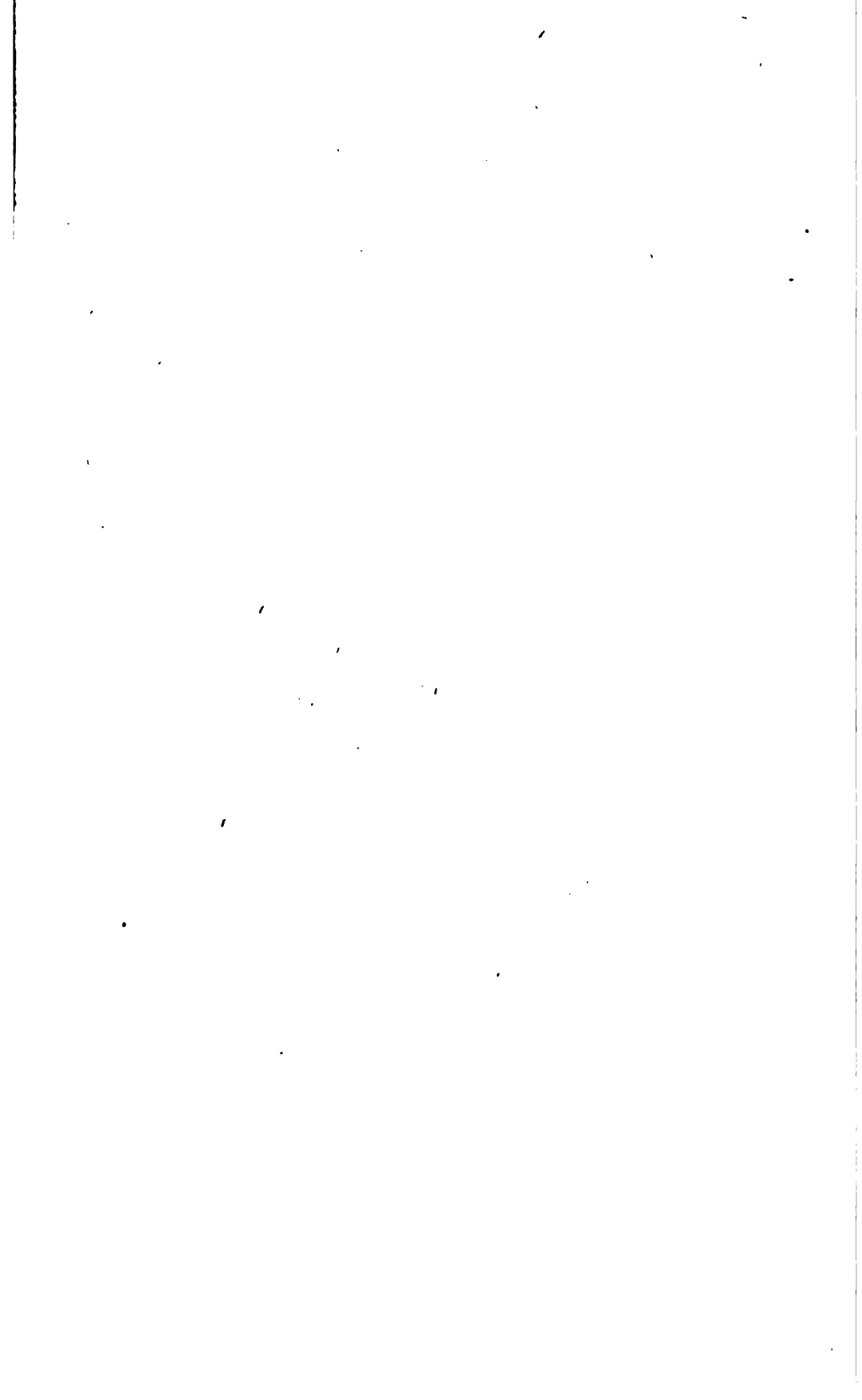
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— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

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OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 2, 1844.

—“Quod magis ad nos  
Pertinet, et noscitur malum est, agitamus.  
HORAT.

### THE STATE OF THE PROFESSION.

ANOTHER incident has occurred at the Central Criminal Court, which, taken in connexion with what had previously taken place, is of considerable importance. A prisoner having appeared without counsel, and being asked whether this was the case, informed the court that he was ignorant in the matter himself, but had left it to the governor of the gaol to procure counsel for him, and had paid him money for that purpose; on which a barrister present stated that he believed this was so, and shortly afterwards received and held a brief from the governor. The presiding judge (Mr. Baron Rolfe), on being appealed to by some other barrister, declined to interfere. This proceeding on the part of the barrister taking the brief, was, we apprehend, irregular. Here is a person, filling the office of gaoler having the disposal of business, with a direct power of selecting the barrister to whom it is to be given. Now, of course, a person in this situation, on being appealed to, may reasonably and properly give his advice and opinion on this point; but if he is to be the channel through which the business is to come; if the fee is to pass through his hands; if he is to have the control of the whole transaction; then, we think, results would follow which would not redound much to the honour or credit of the bar. We certainly think, however, it would be better for all parties if some understanding were to be come to on this head: if the bar, in criminal or any other business, is to dispense with the attorney, let it be at

once known, and so settled. The idea—the theory, we apprehend, at present is, that the attorney shall be employed, as the medium between the bar and the public, and that the barrister shall not receive business except through the attorney. If another rule is to be laid down and followed, all that we ask is, that it shall be so understood, in order that it may be fairly discussed. These old established rules have been settled for the general good and the general convenience, and if they are to be altered, let it be done deliberately and on full notice. As far as we can see, it is for the advantage of all that they should not be altered. We doubt very much whether, even in criminal business, there would be any saving of expense, to say nothing of any other matter. In nine cases out of ten the prisoner would become the prey of some irregular class of practitioners, some agent, some person degraded, for his misdeeds, from the rank of attorney, who, being under no check or control, having outlived the sense of shame, belonging to no class or rank, having no lower deep of infamy to open to devour him,—would plunder without mercy or scruple. We regret extremely, then, on every account, to see any indication of a practice by the bar to dispense with the services of the attorney in any shape, the more so, as this matter is left, to a great degree, to the honour of that branch of the profession to which it has hitherto been quite sufficient to appeal.

But while we think it right thus plainly to broach this matter, and to state our opinion, we must admit that we believe there is not only no wish on the part of



the bar to alter the settled rule on this subject, but that moreover it has in fact been but very slightly departed from. All that we are anxious about is, that it should proceed no farther; and it is for this reason that we swell the cry of the newspapers, on any case of this nature becoming known. Publicity and open comment are in fact the only remedies for the offence. If a solicitor offend, if he be guilty of any misconduct, it should be remembered that there is a remedy at hand. If it be of a gross nature, he can be struck off the rolls, and in minor offences, for what is called shabby practice, the professional societies assume jurisdiction. But the great body of the bar may do precisely what they please. It is true that on every circuit there is a circuit mess, which keeps some sort of surveillance as to what occurs on the particular circuit to which it belongs. But in London there is no such superintendence. The Inns of Court are utterly useless for this purpose. There is no bar club now extant, and all such misdeeds of this nature may be committed with impunity. We submit that this is not a right state of things, and we look forward to a revision of the present system of legal education for the bar, and of the rules laid down by the Inns of Court after the call.

### THE ACT FOR ABOLISHING IMPRISONMENT FOR DEBT.

THE important act of the last session of parliament, which, among other things, abolished imprisonment for debt in actions under 20*l.* (7 & 8 Vict. c. 96, ss. 57–59, printed 28 L. O., 286), has now been in operation for nearly three months, and it cannot be doubted that its effect on existing practice is considerable. We have repeatedly adverted to the present slovenly and inconvenient mode of legislation, and this act is a specimen of the usual course of proceeding. At the very end of the session, an act of this nature is passed, making most important alterations, without any deliberate consideration. All parties in this appear to blame. There was a general concurrence in the principle of the bill, and all parties being agreed as to this, they would listen to nobody, but insisted on the measure becoming at once the law of the land. What are the consequences? Results have occurred not in the contemplation of any one. The greater part of the business of the Courts of Request has,

it seems, been swept away; and where the officers of these courts were paid by fees, they have been almost ruined, so far as they depended on this source of income. Yet there is no clause for compensation in this act; and surely if the measure had been passed deliberately, this result must have occurred to its framers. Again, there are several descriptions of income which cannot be touched under this act; as, for instance, the salaries of clerks in public offices and in other situations. This class of persons have in general but few bills over 20*l.*, and they may now laugh at their creditors. Thus it is that we pass acts "in haste, and repent at leisure." We have repeatedly said that there should be a *drag* on this rapid march of reform, some resting place at which the effect of these great changes which have been recently made in the law can be calmly and patiently considered before they come into operation. What will be the consequence of this last act? We *must* have an amendment act next session, and we trust that the opportunity will be taken to revise and consolidate the whole law of bankruptcy and insolvency.

### CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

#### METROPOLITAN BUILDINGS.

7 & 8 VICT. c. 84.

An Act for regulating the Construction and Use of Buildings in the Metropolis and its neighbourhood. [9 Aug. 1844.]

The objects of this act are stated in the preamble as follow :

Whereas by the several acts mentioned in schedule (A.) to this act annexed, provisions are made for regulating the construction of buildings in the metropolis, and the neighbourhood thereof, within certain limits therein set forth; But forasmuch as buildings have since been extended in nearly continuous lines or streets far beyond such limits, so that they do not now include all the places to which the provisions of such acts, according to the purposes thereof, ought to apply; and moreover such provisions require alteration and amendment; It is expedient to extend such limits, and otherwise to amend such acts :

And forasmuch as in many parts of the metropolis and the neighbourhood thereof, the drainage of the houses is so imperfect as to endanger the health of the inhabitants; It is expedient to make provision for facilitating and promoting the improvement of such drainage :

And forasmuch as by reason of the narrow-

ness of streets, lanes and alleys, and the want of a thoroughfare in many places, the due ventilation of crowded neighbourhoods is often impeded, and the health of the inhabitants thereby endangered, and from the close contiguity of the opposite houses, the risk of accident by fire is extended; It is expedient to make provision with regard to the streets and other ways of the metropolis, for securing a sufficient width thereof:

And forasmuch as many buildings and parts of buildings unfit for dwellings are used for that purpose, whereby disease is engendered, fostered and propagated; It is expedient to discourage and prohibit such use thereof:

And forasmuch as by the carrying on in populous neighbourhoods of certain works, in which materials of an explosive or inflammable kind are used, the risk of accident arising from such works is much increased; It is expedient to regulate, not only the construction of the buildings in which such dangerous works are carried on, but also to provide for the same being carried on in buildings at safe distances from other buildings which are used either for habitation or for trade in populous neighbourhoods:

And forasmuch as by the carrying on of certain works of a noisome kind, or in which deleterious materials are used, or deleterious products are created, the health and comfort of the inhabitants are extensively impaired and endangered; it is expedient to make provision for the adoption of all such expedients as either have been or shall be devised for carrying on such business, so as to render them as little noisome or deleterious as possible to the inhabitants of the neighbourhood; and if there be no such expedients, or if such expedients be not available in a sufficient degree, then for the carrying on of such noisome and unwholesome businesses at safer distances from other buildings used for habitation:

And forasmuch as great diversity of practice has obtained among the officers appointed in pursuance of the said acts to superintend the execution thereof in the several districts to which such acts apply, and the means at present provided for determining the numerous matters in question which constantly arise, tend to promote such diversity, to increase the expense, and to retard the operations of persons engaged in building; It is expedient to make further provision for regulating the office of surveyor of such several districts, and to provide for the appointment of officers to superintend the execution of this act throughout all the districts to which it is to apply; and also to determine sundry matters in question incident thereto, as well as to exercise in certain cases, and under certain checks and control, a discretion in the relaxation of the fixed rules, where the strict observance thereof is impracticable, or would defeat the object of this act, or would needlessly affect, with injury, the course and operation of this branch of business:

Now for all the several purposes above mentioned, and for the purpose of consolidating the

provisions of the law relating to the construction and the use of buildings in the metropolis and its neighbourhood; be it enacted,—

1. That with regard to this act generally, so far as relates to the operation thereof in reference to time, it shall come into operation, as to the districts and the officers to be appointed in pursuance hereof, on the 1st September next, and as to the buildings, streets, and other matters, on the 1st January, 1845; and that on the said first day of January all the acts mentioned in the schedule (A.) hereunto annexed, except so far as in the said schedule is provided, shall be repealed.

2. Construction of the terms.

3. Definition of the local extent and limits of the operation of the act.

4. The Queen in council may extend the operation of the act to any place within twelve miles of Charing Cross.

*General Regulation of Buildings.*

5. Buildings divided into rates and classes, as detailed in schedule (C), with the exception of those included in schedule (B); and all buildings rendered subject to the several regulations set forth in detail in schedules (C), (D), (E), (F), (G), (H), (I), and (K), as regards the erection, alteration, rebuilding, or execution of any works connected therewith.

6. Certain buildings under the special supervision of the official referees.

7. Buildings hitherto exempted from the operation of the Building Act, and classed in schedule (B), under the special supervision of the official referees.

8. The district surveyor to determine the class and rate of any building not included in either of the foregoing classifications.

9. Modification of building contracts, by a reference, in case of dispute, to the district surveyor, with an appeal to the official referees.

10. Modification of building leases or agreements, by a reference to the official referees, subject to the approval of their award by the commissioners of works and buildings.

11. Power to the commissioners of works and buildings, to modify the rules and regulations of the act in particular cases, where the official referees shall certify either that the act cannot be complied with, or that its operation presses with undue severity.

12. Power of modification, by the same means, in case of the rebuilding of existing buildings.

*Duties of Builders.*

13. Builders to give two days' notice to the district surveyor of all works, under penalty of twenty pounds and treble fees in case of neglect; also to give notice of recommencement of works after suspension of more than three months; or in case of change of builder, under similar penalties. Buildings rendered liable to be pulled down as nuisances, in case of refusal to admit the district surveyor or official referees to inspect the works.

*As to Buildings generally.*

14. The district surveyor to give forty-eight

hours' notice of any irregularities to the builder, who is forthwith to amend the same: proceedings in default thereof.

15. Builders to give seven days' notice to the official referees of all buildings subject to their special supervision, with details of the proceedings by the official referees and the builder thereupon.

16. Regulations relative to buildings classed in schedule (B).

17. Reserving power of entry to view, at all reasonable times, to the district surveyor and official referees, with provision for forcible entry in case of refusal.

18. All buildings erected in contravention of the provisions of the act declared to be nuisances, and, as such, liable to be indicted and abated accordingly.

19. Penalty of fifty shillings, or imprisonment, on workmen offending against the provisions of the act.

#### *Party Walls, Arches, and Fence Walls.*

20. General rules relating to party-walls, &c., in intermixed properties.

21. Notice to be given by the "building-owner" to the "adjoining owner" three months before the commencement of any works.

22. Works may be modified to suit the adjoining owner, on application by such adjoining owner to the official referees.

23. Works may be delayed to suit the convenience of the adjoining owner, on application to the official referees.

24. Supplying a want of consent on the part of the adjoining owner, and rendering such consent compulsory.

25. As to the reparation or rebuilding at the joint expense of several owners.

26. The expense of rebuilding party-walls to be borne by the building-owner, excepting in the cases provided for by section 25.

27. Party-walls to be erected of the highest rate of either of the adjoining buildings; or else an external wall to be built against the existing party-wall.

28. Building-owner to make good any damages resulting from his operations, and

29. To rebuild, or make good any party-wall damaged in the course of erection by him, or in erecting any external wall against any party-wall; and, moreover, to proceed with the works with all possible dispatch.

30. Any owner pulling down and rebuilding a sound party-wall, is not to be entitled to more than his fair proportion of the soil or materials belonging to the same, but must make compensation to the adjoining owner for his proportions if he make use of them. The official referees to award the amount of compensation in case of dispute.

31. Buildings may be raised in conformity with the provisions of this act; but the building-owner must at the same time raise the chimneys, &c., and repair all damages sustained by the adjoining owner. The adjoining owner making use, at any future time, of any building so raised, to be liable to his fair proportion of the expense of such raising, &c.

32. Provision for repairing, or rebuilding party-fence-walls.

33. Regulations respecting party timber partitions.

34. Pulling down of intermixed buildings.

35. Exceptions in favour of the inns of court, &c.

36. Power of entry to execute works in accordance with the provisions of the act in cases of contumacious refusal; and imposing penalties on parties hindering or obstructing such works.

37. Authorizing any owner to stop up openings made by any adjoining owner in any external wall.

38. Regulations relative to the building of party-walls on the line of junction of vacant ground.

39. Regulating the building of chimney breasts, &c. in new party-walls for the use of the adjoining owner.

#### *Ruinous Buildings.*

40. Regulations for the repairing, pulling down, and rebuilding of ruinous houses.

41. Disposal of the materials to pay costs.

42. Deficiency to be made good by the owner of such ruinous buildings.

43. Regulations respecting ruinous chimneys.

44. Owner of ruinous chimneys liable for all damage arising from their fall, &c.

45. The court of the mayor and aldermen to have the powers and authorities given by the act to justices, &c.

#### *Expenses of Works.*

46. Repayment of costs of works in certain cases, with remedies in case of delay.

47. The practice to be observed in recovery of such costs.

48. Reimbursement of costs to occupiers.

49. Recovery of costs, as affected by existing leases or agreements.

50. Official referees to determine the proportional contributions of costs and expenses to be paid by joint or several owners.

#### *Drainage of Buildings.*

51. Drains to be built in accordance with the directions and specification contained in schedule (H), enacting penalties in case of default; but reserving all the existing powers of commissioners of sewers.

#### *Streets and Alleys.*

52. Regulating the width of all future streets or alleys, under certain penalties.

#### *Use of Buildings.*

53. Prohibiting the occupation of cellars, or places unfit to be used as dwellings.

54. Prohibiting the erection of any building for the use of any business dangerous, as regards liability to fire or combustion, within fifty feet of any other building. No new business of the kind to be established in any existing building within forty feet of any public way, or fifty feet of any other building; and where any such business is now carried on within the above described limits, such business to become

illegal at the expiration of twenty years after the passing of this Act.

55. Restrictions with regard to any business or trade noxious or dangerous as regards health.

56. Endeavours to mitigate the danger or unhealthiness of any business, may be given in mitigation of the penalties or punishments provided by sections 54 and 55.

57. Appeal in certain cases not specifically mentioned in the act.

58. Trial by jury to determine facts in dispute.

59. Proceedings in appeal to sessions.

60. Reserving common law and statutory remedies.

61. Removal of noxious or dangerous trades by purchase, either by voluntary contributions, or by a parochial rate.

62. Raising a rate for the purpose of compensation in certain cases.

63. Exempting public gas works and distilleries from prosecution as nuisances.

#### District Surveyors.

64. Appointment of districts.

65. Appointment of surveyors.

66. Practical qualifications and fitness of surveyors to be ascertained by examination.

67. Tenure of office by district surveyors.

68. Their duties and functions.

69. Their qualifications and disqualifications for acting.

70. Continuing in office the present surveyors appointed under the 14th Geo. 3, c. 78.

71. Declaration of fidelity to be made by the surveyors on their appointment, with a penalty for acting before making such declaration.

72. Regulating their offices and their attendance, and returns to be made of their names and residences to the registrar of metropolitan buildings.

73. Deputy surveyors *pro tempore*.

74. Vacancies to be filled up within one month, and surveyors *ad interim*, to be appointed by the official referees.

75. Regulating the business of the districts; providing for the appointment of assistant surveyors, if necessary.

76. No district surveyor to have power over any buildings erected by him in his professional character within his own district.

77. Surveyor's fees.

78. Returns to be made by every surveyor, monthly, to the registrar of buildings, of the number of houses, &c., built in his districts; and the amount of fees received by him. A copy of such return to be kept by him at his office, and to be open to public inspection, on payment of one shilling.

79. Penalties on any surveyors guilty of extortion, negligence, unfaithfulness, or incapacity.

#### Official Referees.

80. Appointment of two official referees, with rules for their tenure of office.

81. Their functions.

82. As to matters of reference,—one referee may act.

83. Powers of the referees with respect to awards. Awards to be received as evidence, and to be binding on all parties.

84. No party having entered into a reference before the official referees, shall at any time be able to revoke such reference.

85. The official referees to compel by summons the attendance of persons and documents required in evidence. Also to administer oaths, and take evidence on oath. Any person giving false evidence on oath before them, to be deemed guilty of perjury.

86. The awards of the official referees to be evidence in all courts of law and equity.

87. Declaration of official fidelity to be made by the official referees.

88. Regulating the business of the official referees, and empowering them to delegate and revoke the powers vested in them.

#### Registration of Buildings.

89. Appointment of a registrar; tenure and rules of his office.

90. Declaration of official fidelity to be made by the registrar.

91. The registrar to inspect and have custody of the records of the official referees; also to furnish copies of their awards, and to authenticate the same, on payment of the proper fees.

92. Regulations as to the office of the registrar, and as to other matters connected with his business.

93. Registration of awards, &c.

94. Salaries of the official referees and registrar.

95. Disqualification of official referees and registrar, in case of other appointments.

96. Funds for the payment of a portion of salaries of the official referees and registrar, by certain rates and levies.

97. Payment of the balance out of the consolidated fund.

98. Application of the office fees received by the official referees and registrar.

99. The appointment, functions, and duties of any officers appointed by this act, shall be subject to regulation by any future act of parliament.

#### Legal Proceedings.

100 & 101. Informalities in distress, and actions for damages arising therefrom.

102. Means for the recovery of money under awards.

103. Proceedings in prosecution of offences under this act.

104. Removal of proceedings by writ of certiorari.

105. Appeal in case of convictions in penalties.

106. Limitation of proceedings for penalties.

107. Recovery of penalties, and their appropriation.

108. Regulations of actions against parties acting *bona fide* under the provisions of this act.

109. Security for costs of actions.

110. Prosecutions for neglect or evasion of the provisions of this act.

*Miscellaneous.*

111. Provision as to the several liabilities of owners and occupiers for expenses, &c., under the act.

112. Service of notices required by the act.

113. Mode of service upon occupiers.

114. Mode of service upon owners, by delivery, and its effect.

115. Mode of service upon owners by transmission of notice by post.

116. Mode of service upon the district surveyor and official referees.

117. Consents in case of incapacitated persons.

118. Exempting all awards and other documents under this act from stamp duties.

*Schedules.*

A. Acts and parts of acts repealed.

B. List of buildings exempted from the ordinary supervision of the district surveyor, and placed under the special supervision of the official referees.

C. Rules for determining the classes and rates to which buildings are to belong—as well as the thicknesses of the several walls of such buildings, according to their classes and rates.

D. Rules concerning walls of every kind.

E. Rules concerning external projections.

F. Rules concerning chimneys raised, built, or rebuilt.

G. Rules concerning roofs and roof coverings.

H. Rules concerning drains, cesspools, &c.

I. Rules concerning streets and alleys.

K. Rules concerning dwelling-houses, with regard to back-yards and areas; and rooms under-ground and in roofs.

L. List of fees payable to district surveyors.

M. Rules of practice laid down, and forms of notice required by the act.

An edition of this act has been published by Mr. Thomas Chambers, the barrister, and Mr. George Tattersal, the surveyor,\* which contains an abstract of the act, the statute, verbatim, with notes and cases, the several schedules to the act, an analytical digest of the rules of practice, a glossary of technical terms, and a list of the present district surveyors.

The notes and practical directions will be found very useful, and are the result of much consideration of the act, combined with practical experience of the former law.

## VOTING OF LAY PEERS ON APPEALS.

O'CONNELL v. THE QUEEN.

It has ever been our object to arrive at the truth, and we are quite willing that it should

\* E. Lumley, Chancery Lane, Publisher.

be reached, if necessary, by overthrowing our own positions. We therefore willingly print this letter, and moreover call attention to it, as coming, we know, from a learned gentleman writing on matters particularly within his own knowledge. We must, however, in fairness, advise our readers to read our own article, and we have added a few notes.

*To the Editor of the Legal Observer.*

SIR,—Your article in number 864, and p. 405, of the last volume of the *Legal Observer*, under the head, “Can lay lords vote in appeals?” appears to me to contain some errors, which I am sure you will be glad to correct. After resolving the question into two points—“First, are lay lords entitled to vote? and admitting that they have the right, next, is it according to the practice of the house that they should exercise it?”—You express your opinion that “they have undoubtedly a right to vote, if they please, on all appeals;” you strengthen that opinion by citing an appropriate passage from Blackstone, who, you add, “seems to consider it the duty of the peer to be master of those points upon which it is his birthright to decide.” Under this restriction,\* but not otherwise, I agree with you that it is undoubtedly the right of every peer to vote in all appeals, and writs of error also.

The exercise of the right—which is the practice—is governed by the same restriction; you, however, in answer to the question—“Is it the practice of the peers who have not heard the whole of a case to vote?”—say you “apprehend that it certainly is the practice for lay lords to vote who have not heard the case.” This is one of the errors which appears to me to require correction. There is no instance—for many years at least—of any such practice. You state, correctly, from Mr. Stewart's edition of Blackstone, and from Mr. Macqueen's book, that by arrangement of the house certain lay peers attend in rotation to hear appeals and writs of error; and, as some of such peers attend one day, and others the next day of the hearing of the same appeal, which may last several days, you seem to take it for granted that not only those who so partially attend in rotation do vote on the judgment, but that the arrangement as to the attendance of some peers does not exclude the others from attending and voting, or affect the general practice of the house as established by precedents.

This is, I conceive, the substance and effect of your reasons for the proposition you have laid down. I repeat, that there is no modern instance of a lay peer, or even law peer, voting without having attended to the argument, and “made it his duty to be master of the points,” &c. The peers who attend in rotation by arrangement for the purpose of constituting a house—for which three at least are required—

\* This, however, is not Blackstone's restriction, but our correspondent's; and further, our correspondent passes over entirely the authorities of Mr. Justice Coleridge and Sergeant Stephen.—ED.



do not vote, for the best reason, because they do not take the trouble to make themselves masters of the case. They must be present at prayers; they may look into the printed cases of the parties, and then perhaps read a newspaper, or walk out and come in again, as other lords do in the course of the day; but they do not, with pen and paper, take notes of the arguments, and make themselves "masters of the points," without which no peer could think of interfering in the judgment. See what an apology even Lord Brougham made before he voted in the case of *Attwood v. Small* (6 Clark & F. 346.) Though he had attended to the argument for sixteen days in 1835, yet as the case was not then fully heard, and he was prevented by indisposition from attending at the rehearing in 1836, and consequently had not heard the whole of the respondents' case, nor the reply for the appellant, he claims the indulgence of the house if he should abstain from giving any opinion, and he requests a junior peer who heard the whole case (in 1836) to address the house. "It will depend," he says, (p. 347,) "how far I shall see my way clear to coincide in opinion with the judgment which your lordships will be called on to pronounce, whether I shall address your lordships at all. It may so happen that I shall feel myself disqualified from taking a part in this discussion; it may also so happen that I shall feel myself sufficiently competent conscientiously to discharge my duty by taking such part." Afterwards, (p. 437,) on the adjournment of the further consideration of the case from Thursday to Monday, "to enable him to look more at large into the case," he requested to be furnished with the short-hand writer's notes of the arguments for the respondents, and of the reply, which he had not himself heard; and on the Monday, in proceeding to give his opinion, his lordship says, (p. 440,) "I have gone through the whole of the case, both the notes which assist my recollection of what I heard of the argument, and the printed papers, &c. I have also had the written notes of the arguments laid before me, which I have carefully read, and though I felt some anxiety at first, yet ultimately, &c., I do think I have succeeded in coming to a real view of the merits of the case, &c., so clear, &c., that I feel no doubt or difficulty. And this relieves me from a load of anxiety, &c., because if the result of my examination had been not to bring me to so satisfactory a conclusion, but to leave me in any considerable doubt about it, I should at once, upon the ground of not having heard the whole of the argument, have withdrawn from the position in which I now present myself." He then proceeds to give his opinion.<sup>b</sup>

If Lord Brougham, whose extraordinary faculties can master any subject, as if by intuition, thought such an apology necessary after taking notes of arguments for sixteen days, and studying the printed cases and short-hand writer's notes of the remainder of the argument, what lay peer would have the confidence to interfere in judgment in a case of which he had not taken any note, or other means "to make himself master of the points?"

But not only lay peers, but the profoundest lawyers, decline to interfere in the judgment, without having attended to the argument of a case. For instance, in *Johnstone v. Beattie*, (10 Clark & F. 42,) which was argued for two days, the four law peers who attended to the arguments, found they could not agree in the judgment, and there being two against two, and none of the many lay peers who frequented the house during the argument—for it was a curious case of general importance—having "made himself master of the points," what was done? why, Lord Langdale was brought in, not to decide without hearing the case, but to hear it re-argued for his satisfaction only, and his lordship having so become "master of the points," did give his opinion, and weighed down the scale.

I might refer to many instances of the law lords—and of the judges in all the courts—declining to interfere in judgments in cases which they did not hear argued: I might say it is of constant occurrence. I go farther, and beg leave to doubt whether the cases you cite for the contrary practice in former times, do not prove that the practice then was the same as it is now. The case of *The Bishop of London v. Fytche*, decided in 1783, is reported in the Appendix to Cunningham's Law of Simony, published in 1784, in which (as also in 2 Brown's P. Cases) it is said that the judgment was reversed, on a division, by nineteen peers against eighteen. The entries in the *Lords' Journals* (vol. 36, p. 687) do not state the numbers, or that there was a division at all. But supposing that the statement by the contemporary reporter is correct, what reason<sup>c</sup> is there to say that all the peers who voted did not hear the case argued, and make themselves masters of the points? The question at issue was of great importance generally, particularly

any great case affecting the whole country, although not acquainted with the legal niceties of the case, which of course they could not pretend to understand: although we admit a *law* lord would not do this except under peculiar circumstances. Every judgment of the House of Lords is the order "of the Lords spiritual and temporal;" and thus stands on the Journals.—Ed.

<sup>b</sup> In this case it appears then that Lord Brougham did vote in the case of *Small v. Attwood*, without having completely heard the arguments. But our correspondent here mistakes the point that we put. We considered that lay lords might constitutionally vote in

<sup>c</sup> There is no evidence that they did, and the obvious presumption is, that some one or more out of thirty-seven peers did not. There can be little doubt that the *whip* was used on both sides.—Ed.

affecting the Episcopal Bench and lay patrons, including many peers; it was also a question of which the Lord Chancellor (Thurlow) took a different view from Lord Mansfield, and other judges of the common law courts. It is very probable that many peers besides those who voted had attended in the house, and that those only who "made themselves masters of the points" interposed in the judgment: it is, at all events, quite clear from the speeches of four bishops, given in the report, that they had attended the arguments, and "made themselves masters of the points." Several days were occupied in hearing, first, the eight judges delivering their opinions *seriatim*, and then the four bishops, and the two law lords, and the Duke of Richmond. Why should more days be consumed in hearing other peers, who, though masters of the points, might have no new arguments to offer, and therefore concurred in the reasons before given on one side or the other?

The next case you cite as an authority for your proposition is *Bertie v. Lord Falkland*, in 1697. You say, "upwards of a hundred peers were in the house." I do not know where you find that: the number is not stated in the Journals, nor in the report by Colles, who, after observing (p. 13) that there were contradictory accounts of the fate of the appeal, states the facts from the Journals, vol. xvi. pp. 230, 236, 237, 238, 240, 243, to which I refer you, extracting only what I deem material for my own purpose. "After hearing counsel this day at the bar upon the petition and appeal of, &c., and debate of what was offered thereon, it is ordered by the Lords, &c., that the debate be adjourned to the 17th, &c., and all the Lords *this day present be summoned then to attend*, and all the Judges also." They were summoned accordingly,<sup>a</sup> and the House resumed the debate on the day appointed, when the question was proposed, "whether the appellants shall have any relief," and "it was resolved in the

affirmative," that is, that the decree below be reversed. Then follow the names of twenty-one dissentient peers, protesting against that judgment. There is no entry showing how many voted, or that any one voted who did not "make himself master of the points:" on the contrary, I hold it an inference plain from the above words of the order, (the Lords then present, &c.) that all the peers who voted did previously make themselves master of the points in the cause: and I think the third case to which you refer, *Douglas v. The Duke of Argyll*, is no better authority than the two former.<sup>f</sup>

Allow me to correct another error: "the practice," you say, (p. 407, 2nd column,) "of peers voting is not confined to the last century, and recent instances may be given in which the great body of peers have thought it fit to attend and vote in the judicial business of the House of Lords." Your proof of this assertion is an extract from Lord Brougham's speeches; but his lordship says, "though the peers generally interfere very little with the judicial business of the House of Lords, &c., their lordships do not exercise the same abstinence upon divorce bills." Then follows the instance. I admit that the proceedings in the second reading of a divorce bill are of a judicial nature, and I further admit that it has been and is the practice of lay peers to vote; they did so in the late case of the *Townshend Peerage*, (10 Clark & F. 389; see pp. 311 to 316); but I say with confidence, because I know, that they did not so vote without "hearing the case and making themselves masters of the points."<sup>g</sup>

Then, in the second column of p. 470, you observe, "When there is an equality of votes in any question, the effect is the same as if there were a majority of non-contents, &c. If, therefore, in a motion to affirm a judgment, the lords should happen to be equally divided, the motion would be negative, and a reversal would be the consequence." Now, I submit that all petitions of appeal and writs of error pray that the judgment complained of be reversed, &c., and the first question put by the Speaker is, "whether it is their lordships' pleasure that it be reversed." When the question is fully put, and the numbers are found to be equal, *affirmance* of the judgment, and not a reversal, is the consequence.<sup>h</sup> Towards the conclusion

<sup>a</sup> Our authority for this statement is the very accurate book of Mr. Macqueen, p. 28.—Ed.

<sup>c</sup> Our correspondent is not quite candid here. It is true, as he says, that the lords present were *summoned to attend*, but the fact is, from the Journals, that many did not attend who attended the first day, and *vice versa*: as the lists of the names of the peers present on the 10th and 16th of March, 1697, the two days referred to, *differ in many particulars*; and the clear inference is, that the peers who attended the second time decided the case, some of them not having been present on the first day: and it would further seem that, in particular, Earl Berkeley was among the dissentients (his name being given) on the 16th, not having been present on the 10th. But what was the point in this case? It was whether Mr. Bertie should enjoy an estate for life. It was a legal question. How, then, we wish to know, could the lay peers, the hundred and more that attended, make themselves "masters of the points?"—Ed.

<sup>f</sup> This is a very summary way of disposing of the case; but how does our correspondent get over the fact that in this one hundred and seven peers were present at the decision?—Ed.

<sup>g</sup> In the *Townshend Peerage* case our correspondent is, no doubt, correct; but he has supplied us with a recent instance of the lay peers voting in a judicial matter, not a divorce bill; and we must repeat, that in divorce bills, as to which we have already cited Lord Brougham, it has been the practice of lay peers to vote without having heard the case.—Ed.

<sup>h</sup> We are obliged to our correspondent for setting us right here, or rather for completing our sentence. We were right in our statement, but, to avoid the result which we stated, we

of your article, you repeat your opinion that "the precedents in the House of Lords (those before mentioned) would have justified the lay lords voting, particularly as this (*O'Connell and others v. The Queen*) was not an ordinary legal case, but a case involving great political considerations. It is important that this should be understood, as this case, without such understanding and explanation, would go far as a precedent in all future cases, and thus a course of proceeding, which was adopted in the emergency, &c., would grow into a settled rule, which appears to us to *unsettle a most important constitutional principle.*" I beg humbly to submit that the case of *O'Connell and others v. The Queen* does not unsettle any constitutional principle, but that it is in perfect accord with all such principles, as it is with precedents and with the practice of the House. Let us recollect what passed. The case was argued for six days and parts of two nights, before many peers—lay, and law, and episcopal—several of the judges of the common law courts being present. Of the peers who attended, some from curiosity, others from other motives, *five only* were seen to take the means of "making themselves masters of the points." Each of these had a desk or table before him, with the printed cases and writing materials—as is the general practice—and each took copious notes of the arguments, put questions to counsel, called for explanations, conferred with the learned judges, called for books, text-books, and reports—indeed, kept the messengers of the house constantly on foot, fetching those books from the bar and the libraries. At the close of the arguments, these five peers conferred together, and agreed upon eleven questions of law to be proposed to the learned judges; and never were questions framed in a more fair and favourable form for plaintiffs in error, *testibus* the 3rd and 11th, in 28 Leg. Obs. 360. The learned judges, having obtained time to consider these questions, came on a day appointed and delivered their opinions, agreeing in their answers to all the questions, except the two above mentioned, upon which two of the judges were for reversing the judgment, while six were of a contrary opinion. The opinions of the judges were ordered to be printed, and a future day appointed for the peers to give their judgment. The peers met, in large numbers, on the day appointed, but *five only*—the five who took notes of the arguments, as before mentioned—had duly prepared their judgments, with their reasons reduced, for the most part, to writing, which they severally read. They differed, two being in support of the judgment of the court below, and three for reversing it. There was no other peer who "made himself master of the points," or at all prepared to assign legal reasons for

the vote which several were ready to give. Now let me ask, whether, in this case, thus truly, though tediously, described, it would not be a violation of all constitutional principles, a profanation and a mockery of sacred justice, a disgrace and destruction to the judicial sanctity of the supreme court of these realms—the last resort for the oppressed subject—if these peers were allowed to interfere in the decision? I know your answer.

One word in the last paragraph of your article, "the necessity of reconsidering and re-settling the present appellate jurisdiction of the House of Lords," &c. I do not say that that jurisdiction cannot be improved, but I say that, as constituted and working now and for some years back, the suitors to it have the benefit of the highest and most varied legal learning that ever adorned any judicial tribunal, whether original or appellate; that the noble and learned persons who give their gratuitous aid to the Lord Chancellor do, like his lordship, devote their time and minds to the most laborious investigation of all the cases that come before them, and, in confirmation of their solemn decisions, give their reasons at length, not only for the satisfaction of the parties, but also for the benefit of the legal profession in all countries and ages to come. A. B.

[One other word, in conclusion, on this important matter. The argument of our correspondent appears to us untenable. He seems to suppose that no peer has a right to vote who has not a desk before him, and can state legal grounds for his opinion. Surely this is at once to exclude all the lay peers. How is it possible for a lay peer to give legal reasons, or to take notes of any legal value in an appeal? This throws the power entirely into the hands of the law lords. It may be right to do this; it may be right that they should have it; but we repeat, it is not the theory of the constitution, as laid down by all constitutional writers, some of whom we cited in our first article. If it be right that the law lords shall have the exclusive right of deciding the judicial business of the House of Lords, it should be so declared, and not left to be regulated by the practice of the House of Lords. It is perfectly true that by accident there is at present a most admirable tribunal in the law lords who now dispose of the appeals. Who would underrate the judicial merits of the Lord Chancellor and Lords Brougham, Cottenham, and Campbell? But the country might be deprived of the assistance of three of these learned lords at any time. In the present century, the Lord Chancellor sat alone and unassisted for many years. The present excellent constitution of the appellate jurisdiction of the House of Lords is the result of chance. It would be next to impossible to find again the same men willing to work. Besides on principle we object to the purely gratuitous aid of the judges of the first appellate jurisdiction of the country. We repeat, then, that this merits the attention of the legislature in the ensuing session: and, moreover, we do not doubt that it will receive it.—ED.]

should undoubtedly have added that in the practice of the House of Lords, the question is first put for *reversing*, and not for *affirming* an appeal. See Macqueen, p. 27.—ED.

## MICHAELMAS TERM EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted attorneys, have appointed Tuesday the 19th of November, at half-past nine in the forenoon, at the hall of the Incorporated Law Society, in Chancery Lane, to take the examination, which will commence at ten o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due services, according to the regulations approved by the judges, must be left at the Law Society, on or before Wednesday the 9th inst.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected he should answer in *three* or more of the other heads of inquiry.—*Common Law* and *Equity* being two thereof.

195 notices of admission have been given for this term, but of these 29 have been already examined, leaving 166 to be examined, besides 6 who have not given notice of admission.

## SUPERIOR COURTS.

## Vice-Chancellor of England.

[Reported by E. VANSITTART NEALE, Esq., Barrister at Law.]

## PARTIES.—JOINT STOCK COMPANY.—MISJOINDER.

*To a bill charging the directors of a joint stock banking company with a fraudulent misappropriation of the assets of the company, and praying for an account against them, and that they might be restrained from acting as directors, and for a receiver of the partnership assets: Held, not necessary that all the shareholders should be parties. Three out of several co-plaintiffs, members of a trading co-partnership, were specially liable to the payment of certain bills, which it was alleged were accepted by them as sureties for the co-partnership; and in respect of which an injunction was sought. Held, that there was no misjoinder.*

THIS was a demurrer to a bill, having as its object the obtaining an account of the assets of

the late Marylebone Banking Company, and also the restraining three actions brought against three of the plaintiffs, as sureties for the bank. The alleged causes of demurrer were misjoinder and want of parties. The misjoinder, it was contended, was produced by the joinder of the plaintiffs, who, as sureties for the bank, were specially liable to pay the promissory notes with the others, who had only a general liability as shareholders in the bank. The equity for restraining the actions rested on allegations that the debt had been satisfied out of the assets of the company. The more important question was upon the want of parties. The bill as at present framed was filed by certain of the shareholders in the bank, in behalf of themselves and all others except those who were made defendants, who were the directors of the establishment; it stated that all the calls had been paid up by all the shareholders except the defendants, whom it charged with a fraudulent misappropriation of the monies thus received, and with nonpayment of what was due on their own shares, and it prayed for an account of all sums received or which ought to have been received by the directors, and of all sums properly expended by them, and of all bills discounted by them on which any loss had been sustained, and of all transactions not included in these accounts, and asked for all necessary declarations and directions in respect of them; and that what should be found due from the directors should be paid and applied for the benefit of the shareholders, as the court should direct; and in the meantime that the directors might be enjoined from acting as such; and that a receiver of all the estate and assets of the company might be appointed. On a former occasion the bill had been before the court upon a demurrer which had then been allowed. At that time it contained a prayer for a declaration, "that the business of the company having ceased and determined subject only to the winding up of its affairs, the company is dissolved, and ought to be dissolved," and that an account might be taken of the deposits and calls of the shareholders, and of the debts and assets due to the company. The demurrer had been allowed on that occasion, on the ground that what was asked practically amounted to a decree for the dissolution of the company, which the courts will not make in the absence of any of the parties entitled to oppose it. It was now contended for the plaintiffs, that the bill was brought within the reason of *Walworth v. Holt*, 4 M. & C. 619; where Lord Cottenham had allowed some partners to sue on behalf of themselves and all others for an account of the assets of an insolvent joint stock bank.

Mr. Wakefield, Mr. Bethell, and Mr. Locat for the bill.

Mr. Stuart, Mr. Lowndes, Mr. Elmsley; and Mr. Wood, for the demurrers, distinguished the case from *Walworth v. Holt* upon the ground that there it was stated that the com-

pany was insolvent, and therefore no general account was sought, as was in fact the case here; there also, there was no property to meet the claims but the unpaid calls of the directors, neither was any account sought of the management of the company by the directors as such, and therefore the bill did not involve the necessity of taking all the accounts which would be necessary on a dissolution; lastly, in that case, there being no surplus, there was no necessity for a distribution among the shareholders, or for ascertaining their respective shares, or taking an account of the debts owing from them to the company; but all these circumstances occurred here. They cited *Loscombe v. Russel*, 4 Sim. 8.

The Vice Chancellor deferred his judgment until he could satisfy himself how far the case fell within the reason of *Walworth v. Holt*; and then said that he could not see any substantial difference between the two cases; it appeared to him that the relief asked in that case was as extensive as in the present, and there were here allegations similar to those contained in that bill, namely, that all but the defendants were in the same interest with the plaintiffs who sued on behalf of them and of all the others. He thought the reason of Lord Cottenham's decision in *Walworth v. Holt*, was applicable to the present case; because if you required all the partners to be present, great injustice might be done without any power of obtaining redress. As to the alleged misjoinder, there certainly was a special case stated as to some of the parties, but it seemed to him that sufficient was stated as to the circumstances under which the promissory notes were given to show that these gentlemen would have a right to be paid out of the assets; it was true that these individuals would be specially released, as to the promissory notes, but the case was so stated as to show that the general assets must be applicable to make good the amount due on them, if those assets should be realized; he therefore thought that there was no misjoinder. Demurrers overruled. *Deeks v. Stanhope*. July 8th and 12th 1844.

### Vice-Chancellor's Telegram.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

INJUNCTION.—VENDOR AND PURCHASER.—  
SALE OF SHIP.—PRACTICE.—LIEN.—RECEIVER.

*Upon motion for an injunction by an alleged purchaser, to restrain the registered owners of a ship from interfering with her, her cargo, or freight, a court of equity has power to take possession thereof, until the validity of the sale has been decided at law.*

*Semble, that a party who claims as purchaser of a vessel to which he is found to have no title, cannot claim a lien upon her for money expended in her repair.*

*Quære, whether equity can assist a party in removing one name from, and putting another upon, the register?*

*Practice of the court in directing issues, or leaving parties to their legal remedy, and in imposing terms upon them.*

Mr. Romilly moved, on the part of the plaintiffs, (the alleged purchasers of the barque "Indemnity,") to restrain the defendants (her registered owners, who denied the validity of the sale by their captain,) from interfering with the vessel or cargo, or from removing or attempting to remove her out of the port of London, or from the jurisdiction of the court, or from instituting proceedings in the Court of Admiralty relative to the possession of the vessel; and also for a receiver to manage the ship, &c. pending proceedings in law or equity; to take possession of the cargo; and to receive the freight. The vessel was in the docks of St. Katherine, and the cargo in the temporary custody of the dock-master. In support of the injunction it was stated, that the vessel having reached Port Nicholson in July 1842, was found, upon survey, to be unseaworthy. The captain and the consignees being unable to obtain the funds necessary to put her into repair, she was advertised and sold to the plaintiffs, who thoroughly repaired her. She afterwards came to this country with consignments, and on arriving in the docks, the defendants took possession of her. The plaintiffs claimed as purchasers from the captain, who had given a bill of sale, and they insisted, that even if the sale should appear to be invalid, they had a right of lien upon the vessel until they were repaid the amount expended in repairs. They had paid for the vessel by an endorsement upon a bill of exchange, which, however, they refused to honour until the sale was confirmed by the defendants; and they sought by the present motion also to restrain an action which had been commenced by the indorsers, until the question as to the validity of the sale had been decided. The defendants denied that the repairs were necessary to the extent to which they had been effected; that the master had power to sell; or that, supposing he had, the sale was perfect and valid in law.

Mr. Romilly and Mr. Rolt, in support of the motion, submitted that the court would at once decide upon the validity of the title of the plaintiffs as purchasers, the only defect in completing it being the formal act of registry at the Custom-house. As to the authority of the captain to sell, they cited the case of the "Gratitude," 3 Rob. Adm. Rep. 240; *Mestaer v. Gillespie*, 11 Ves. 621; *Ex parte Yallop*, 15 Ves. 60; *Reid v. Darby*, 10 East. 143; *Robinson v. Macdonnell*, 5 Mau. & S. 228; *Morris v. Robinson*, 3 B. & C. 196; *Hunter v. Parker*, 7 Mee. & W. 322.

His Honour said, that before hearing the other side he would consider the authorities; and intimated that he did not entertain so much doubt about the necessity of the sale, as to the equitable jurisdiction of the court in the case of a ship.



July 26. His Honour said,—It is clear the only question which it is competent for me, at this time, to decide is, whether the facts relied upon give the applicants a title at law. There is no ground for saying that they have an equitable title to the assistance of the court, until this is established. The next question is, supposing the legal title be not made out, whether the plaintiffs have a title by way of lien in respect of the money which they may have expended. The case of *Arthur v. Barton*, 6 M. & W. 138, is a direct authority on that point, although before that case was cited I was inclined to think that there could be no lien in this case, and for this reason: on looking at the bill of sale, it appears the property is designated as the defendants', of which the plaintiffs had become the purchasers. Having got a title as purchasers, they would have had a right to do what they pleased in the character of owners. It turns out, according to the defendants' case, that, in truth, they purchased without a title, and that they have been expending money upon this chattel. If that is the case, a court of equity cannot give him a lien. A person buying the estate of another, without a title, cannot come into this court and say, "I will retain the estate until you pay me the money which I have laid out upon it." There is no such equity, in the absence of any contract. That therefore is a point upon which I need not trouble the counsel for the defendants.

The next question is, whether the chattel is of such a nature as to entitle the plaintiffs to the protection of a court of equity. I have very little doubt that there are many cases in which the owners of a ship would be entitled to protection; as, for instance, where she had engagements, and other cases, in which damages would not be an adequate compensation, and in which justice would not be done except by protecting the chattel. Here nothing more is stated than the arrival of the ship in the river Thames, and a dispute as to the lawful ownership. Upon that case alone I could never decide the case in the plaintiffs' favour without deciding that whenever a ship comes into the Thames, and a dispute arises as to who is the legal owner, a bill in equity will lie to prevent the other party from interfering until the question of law is decided. Another ground might be mentioned, (which would alter this view of the case,) namely, that the parties might be about to deal with it in a way which would entitle the plaintiffs to an injunction. They might be about to destroy it, or carry it away, so as to make the interference of the court proper, regard being had to this, that there is a sort of privity which the plaintiffs have, inasmuch as they claim under the defendants' agent, and the agent had power, under some circumstances, to make a good title. That point I exclude here, because there is nothing whatever of that special nature in the case. I would also exclude the point which was very prominently put forward in the bill, namely, that the bill of sale, if not good as a

bill of sale, is yet good, and may be treated as a bottomry bond. Lord Langdale has decided that if an instrument would not operate precisely in the way in which it was intended, it might operate in another way, so as to effectuate what was the actual intention of the parties. But here the intention of the parties was to effect a sale; that was the object: now they say they will call upon the court to treat it as a bottomry transaction. Upon these parts of the case I am with the defendant.

But there are two other points which are very extensive in their bearings. In the first place, the legal title may be in the one party, and the apparent title in the other. If the plaintiffs have the legal property in the ship, by means of the sale, then, in order that they may acquire a perfect title according to the laws of the country, they must, by some means, get their names upon the register. The defendants' names are now upon the register, as apparent owners. A man cannot have a perfectly legal title to a ship, until he gets his name upon the register, although his name may be on the register without his being the lawful owner of the ship. If the sale has given the plaintiffs the legal right, they must have the right to get their names upon the register. If the sale is good, and the defendants refuse to allow the plaintiffs to put their names upon the register, there must be some machinery or other, by which the legal title must be perfected. As the case stands now, the defendants are the apparent owners, and the plaintiffs are the real owners. That may give the latter an equity.

Another point is this,—and it may give the plaintiffs an equity according to their case,—your agent, lawfully authorized, sold the ship, and arranged with the purchasers, that they should give him a bill of exchange in a certain form. Accordingly, as the case now stands, they, the purchasers, the plaintiffs, are liable to the defendants' agent, by whom the ship was sold. Upon that bill of exchange the agent has brought an action. The present bill seeks to restrain the proceedings in that action. If they choose to waive their purchase altogether, according to the argument, they might have a right to file a bill to restrain the agent's action, without bringing the right to the ship into contest at all. But if they choose to insist upon their title, the difficulty is, how they can bring the question as to the bill of exchange before the court, without bringing before it also the question as to the ship. Upon these two points I require further information. As to the others, it seems to me that this is a case in which the legal title must be tried at law. The question will be what the court ought to do pending the inquiry.

Mr. J. Parker and Mr. Campbell were then heard for the defendants, upon the two points mentioned and cited, *Anderton v. Cambridge*, 2 B. & Cr. 691; *Sykes v. Giles*, 5 Mer. & W. 645; *Abbott on Shipping* by Shee, pp. 1, 2, 14, 6 Geo. 4. c. 105, (St. Katherine's Dock Act), 3 & 4 Vict. c. 65, (The Admiralty Act.)

They argued, 1st, that the bill of sale was

invalid; 2ndly, that the question as to the transfer of the name on the register was a purely legal question, which might be raised upon a motion for a *mandamus*; 3rdly, that, at all events, a court of equity could not interfere, but that the admiralty was the proper jurisdiction in such a case. They put the cases of a sheriff taking possession, and of a refusal of a steward to admit a tenant to a copyhold.

Mr. Romilly, in reply, cited *Jones v. Hughes*, 1 Hare, 383.

His Honour said,—It has already been considered an established rule, that equity will not interpose to restrain a mere trespass. An illustration of this principle was given in *Jones v. Jones*, 3 Mer. 161, in which the right to an estate was litigated between an heir and a devisee. One of the parties proceeded to cut down timber pending the suit. There Sir William Grant very properly refused the injunction to prevent the timber from being felled. In modern cases, the court has very usefully interposed to restrain what appeared to be only a trespass. But the proposition is too large, that in every case where parties are alleged to be about committing a trespass which will be attended with irreparable mischief, an injunction will be granted. Supposing the nature of the injury apprehended is such as to make it impossible to measure the amount in damages, or if the case be one in which any calculation of the amount of the injury must be purely speculative, there, indeed, the inclination of the court is, in general, to protect the party in the enjoyment of the property *in specie*. In this case, it is not alleged that the ship is under any engagement, which, if not fulfilled, might leave the parties open to unliquidated damages or to some mischief, the amount of which cannot be accurately estimated. If the rights of the parties are equally balanced, and another court has to determine them, it is not very easy to be understood why this court is to lend its aid in favour of one rather than another, or, what, in fact, ought to be done, pending the litigation of the question. I will, however, read the affidavits, and give the case my best attention.

[The final judgment will be given in our next number.]

#### Queen's Bench Practice Court.

[Reported by E. H. WOOLSTON, Esq., Barrister at Law.]

PRACTICE.—DISTINGAS TO COMPEL APPEARANCE.—LUNATIC.

*Circumstances under which a Distringas was granted to compel an appearance by a lunatic.*

*Look applied for a distringas to compel an appearance by the defendant, who was a lunatic. The affidavit stated that the defendant resided at his father's house; that he was of unsound mind, and that deponent had been informed and believed was under the care of a keeper, without whose consent, or the consent of the other inmates of the house, no one was per-*

*mitted to see him; that the deponent went to the residence of the defendant, for the purpose of serving him with a copy of a writ of summons, when he saw the footman of the defendant's father, who, in answer to his inquiries, told him that the keeper could not be seen, and that no person was allowed to communicate with the defendant; that he again went to the defendant's residence, for the purpose aforesaid, and saw the same footman, who, in answer to his inquiries, again stated that neither the keeper, the defendant's father, or the defendant himself, could be seen, and that no communication with him was allowed; that defendant then inquired whether he could see the defendant on any other day, and at the same time informed the footman that he had a writ of summons to serve upon the defendant, when he was again informed that no one was allowed to see or communicate with the said defendant; whereupon the deponent left a copy of the writ of summons with the footman.*

*Coleridge, J.*—Take a rule.

Rule granted.

*Banfield v. Durrell*, Q. B. P. C. E. T. 1844.

MR. HORACE TWISS has been appointed to the vacancy in the office of Vice-Chancellor of the Duchy of Lancaster, made by the death of the late Mr. Holt. We think this a very proper appointment.

#### COMMON LAW CAUSE LISTS.

*Michaelmas Term*, 1844.

##### Queen's Bench.

New Trials remaining undetermined at the end of the Sittings after Trinity Term, 1844.

*Michaelmas Term*, 1842.

*Essex*.—Corporation of Colchester *v.* Brooke, (2nd case.)

*Michaelmas Term*, 1843.

*Middlesex*.—Rogers *v.* Brenton; Willoughby Clk. *v.* Willoughby; Same *v.* Same.

*Norfolk*.—Berney *v.* Read.

*Survey*.—Doe d. Angell *v.* Angell (part heard.)

*Hilary Term*, 1844.

*Middlesex*.—Clifton *v.* Hooper and another; Phillips *v.* Sherrill; Hunter *v.* Caldwell; Needham, Esq. *v.* Rawbone; Balls, executrix, *v.* Thick; Bax *v.* Beetham.

*London*.—Gillett *v.* Whitmarsh; Hart, administrator, &c. *v.* Stephens; Bate and another *v.* Rawlinson; Yates, a pauper, *v.* Tearle and others.

*Tried during Hilary Term*, 1844.

*Middlesex*.—Lyon, Junr. *v.* Burroughs; Hopkins *v.* Richardson.

*Easter Term*, 1844.

*Middlesex*.—Duncan *v.* Louch; Same *v.* Same; Doe d. Tebbutt and others *v.* Brent and others; Holloway *v.* Turner and another.

*London*.—Rolfé v. Reynolds the elder; Martin v. Wright; Cobb v. Beck and another.  
*Kent*.—Allen v. Hayward; Doe d. Muston v. Gladwin; Mayor, &c. Rochester v. Levy.  
*Surrey*.—Hopkinson v. Lee; Baynton v. Seal and another.  
*Bucks*.—Doe d. Brise v. Brise.  
*Cambridge*.—The Queen v. Mortlock.  
*Norfolk*.—Hunt and others, executors, &c. v. Jones.  
*Chester*.—Wharton v. Walton; Worthington, administrator, v. Grimsditch, M. P.  
*Worcester*.—The Queen v. Rev. W. Smith.  
*Stafford*.—Bromley v. Spurrier.  
*Gloucester*.—Holford, Esq. v. Bailey, Esq.; Green v. Byce and others.  
*Hants*.—Doe d. Feleney and others v. Wise.  
*Devon*.—Mayor, &c. of Saltash v. Finnymore; Woolcomb v. Sleeman.  
*Somerset*.—Gale v. Bernal.  
*Northampton*.—Simons v. Spier.  
*Lincoln*.—Mayfield v. Robinson; Doe d. Swinton and others v. Cook.  
*Notts*.—Spencer v. Carlen.  
*Derby*.—Roe d. Vevers, v. Ault; Winterbottom v. Ingham.  
*Warwick*.—Elliott v. Blackwell.  
*Carlisle*.—Topping v. Hayton.  
*York*.—Doe d. Corporation of Richmond v. Morphet; Gibson v. Call and others; Adams, a pauper, v. Hartley; Ferrard v. Milligan; Dawson v. Gregory.  
*Liverpool*.—Hargreaves v. Wood and another; Pow v. Taunton and another; Aikin v. Faith and others.  
*Tried during Easter Term, 1844.*  
*Middlesex*.—Littlechild v. Banks; Brooks v. Bockett; Same v. Same; Skilbeck and another v. Garbett.  
*Trinity Term, 1844.*  
*Middlesex*.—Harrison v. Varty and another; Same v. Same; Gladman v. Plimmer.  
*Tried during Trinity Term, 1844.*  
*Middlesex*.—Mercer v. Bartlett; Croucher v. Currie and another; Moses v. Jacobson.  
*Special Cases and Demurrers, Michaelmas Term, 1844.*  
 Howard v. Gossett, dem.  
 Corporation of London v. Bold, special case.  
 Doe d. Warwick v. Coombes and another, special case.  
 Adams v. Adams, special case.  
 Fletcher the younger v. Calthorpe and another, dem.  
 Van Sandau v. Turner and another, dem.  
 Planche v. Hooper, special case.  
 Land and others v. Hooper and another, dem.  
 Kendall v. Corles, dem.  
 Baker, administratrix, &c. v. Beadle the elder, dem.  
 Graham v. Jackson, special case.  
 Graham and others, assignees, &c. v. Witherby and another, special case.  
 Pargeter and others v. Harris, dem.  
 Perry v. Fita Howe, dem.

Green and another, assignees, v. Wood and another, special case.  
 Ekin and another v. Flay, special case.  
 Graham and others, assignees, v. Lynes, special case.  
 Prothoro v. Phelps, dem.  
 Mortmore v. Moore and another, dem.  
 Gregory v. East India Company, dem.  
 Miles, Treasurer v. Bough, dem.  
 Scarpaline v. Atcheson, dem.  
 Orgar v. Hirne, dem.  
 The St. Catherines Dock Company v. Higgs, special case.  
 Hamner v. Eyton, case from new trial paper.  
 Kennett and Avon Canal Navigation v. Great Western Railway Company, special case.  
 Tannin v. Anderson, dem.  
 Teece v. Brown and others in replication, dem.  
 Robins v. Marchant, dem.  
 Elwell v. Birmingham Canal Company, special case.  
 Nicholls v. Stretton, dem.  
 Peake v. Screech, dem.  
 Belcher and others, assignees, v. Campbell and another, special case.  
 Selby v. Brown, dem.  
 Edmunds v. Pinneger and others, dem.  
 Doe d. Dand v. Thomson, special case.  
 De Winton and others v. Goode, dem.  
 Vine v. Bird, dem.  
 Rance v. Dyball, dem.  
 Anderson v. Cargill and others, dem.  
 Taylor v. Stendall, dem.  
 Mayor, &c. Litchfield, v. Simpson, dem.  
 Wrightup v. Greenacre, dem.  
 Clarke and others v. Tinker, special case.  
 Penny v. Gabriel and others, dem.  
 Finden v. M'Laren, the younger, dem.  
 Hartley and another v. Manton and another, dem.  
 Pilkinhorn v. Wright, dem.  
 Nicholas v. Wright, dem.  
 Boulet v. Maire, dem.

#### Common Pleas.

*Remanet Paper of Michaelmas Term. 8 Victoria, 1844.*

#### Enlarged Rules.

*Enlarged generally.*—Johnson and others, assignees, v. Shaw and another; Dawson and another, assignees, v. Sunley; Wood v. Weatherby.

#### New Trials of Easter Term last.

*Middlesex*.—Collins v. Savage and another.

*London*.—The Fishmongers Company v. Robertson and others; Iley v. Frankenstein; Wilkinson v. Earl of Litchfield; Metcalf and another v. Bushby.

*Glamorgan*.—Doe (Morgan and others) v. Powell and others.

*Suffolk*.—Camac, Knt. v. Warriner.

*Chester*.—Doe (Caldecott) v. Johnson.

#### New Trials of Trinity Term last.

*Middlesex*.—Eliot v. Allen and others; Gills v. Dugan.

*London*.—Walton v. Rumsey; Gerish v. Chartier.

## CUR. AD VULT.

Grinnell v. Wills.

Coxhead v. Richards.

Pontifex and another v. Wilkinson.

Lunn v. Thornton.

Pim v. Grazebrook, and another, argued 2nd June, 1843.

Demurrer Paper of Michaelmas Term. 8 Victoria, 1844.

Saturday,	Nov. 2	} Motions in arrest of judgment.
Monday,	— 4	
Tuesday,	— 5	
Wednesday,	— 6	
Thursday,	— 7	
Friday,	— 8	Special Arguments.
Aspinall and another v. Andus.		
Williams v. Burrell, Bart. and another.		
Nichols v. Payne.		
Steele v. Pope.		
Rastrick v. Beckwith and others.		
Bentley v. Goldthorpe and another.		
Marriage v. Marriage.		
Burgess v. Beaumont, Esq.		
Rannie v. Irwin.		
Beckett v. Bradley.		
Walker v. Petchell.		
Harrop v. Cook.		
Griffiths v. Dunnott.		
Thompson and another v. Small.		
Legge v. Boyd.		
Edgell v. Curling.		
Wednesday, 13th Nov., special arguments.		
Friday, 15th ditto.		
Wednesday, 20th ditto.		

## Exchequer of Pleas.

## NEW TRIAL PAPER.

For Michaelmas Term. 8 Vict. 1844.

For Judgment.

Moved Easter Term, 1844.

Liverpool, Mr. Baron Rolfe.—Rogers and another v. Maw.

Heard 28th May 1844.

For Argument.

Moved Hilary Term, 1844.

London, Lord Abinger.—A. J. Acraman v. Cooper and others.

25th April 1844, enlarged until after New Trial had in W. E. Acraman v. Cooper and others.

Moved Trinity Term, 1844.

Middlesex, Mr. Baron Parke.—Heath v. Unwin.

Middlesex, Mr. Baron Parke.—Franklin v. Neate.

London, Lord Chief Baron.—Dailey and another v. Loveday.

## SPECIAL PAPER.

For Michaelmas Term. 8 Vict. 1844.

For Argument.

Smith, secy., &amp;c. and others v. Hopkinson, special case.

To stand over until similar case disposed of in the Court of Error.

Danton v. The North Midland Railway Company, special case.

Yonde v. Jones, special case from Chancery.

Coulton v. Ambler, special case, order of Mr. Baron Rolfe.

Mallan and another v. May, ditto from Chancery.

## Peremptory Paper.

Michaelmas Term, 8 Victoria, 1844.

To be called on the first day of the term, after the motions, and to be proceeded with the next day, if necessary before the motions.

Date rule nisi, 4th June, 1844.

The mayor, aldermen, and burgesses of the borough of Ludlow, in the county of Salop, v. E. L. Charlton, Esq.

## Court of Requests.

Michaelmas Term, 1844.

Before the Right Hon. Sir J. L. Knight Bruce.

## Adjourned Petitions.

Norton v. Wood.

Price v. Gibbs.

Fell v. Fell.

## New Petitions.

Alexander v. Burbey.

Whitmore v. Hunt.

Cotton v. Nutter.

Jones v. Morrison.

Gregory v. Fairclough.

Hornby v. Prichard.

Burridge v. Winchester.

Smoulten v. Halford.

Burt v. Page.

Swainson v. Lecesne.

Falls v. Jackson.

Kitching v. Jackson.

Cleobury v. Mills.

Vignoles v. Whitmarsh.

Johnson v. Davis.

Garnett v. Garnett.

Hammond v. Hammond.

Stratton v. Deakin.

Norton v. Wood.

Turner v. Gundry.

Wilde v. Wilde.

Price v. Gibbs.

Hedly v. Emmerson.

Robson v. Conibere.

Wood v. Smith.

Honnofield v. Crick.

Sorby v. Sayle.

## COMMON LAW SITTINGS.

Michaelmas Term, 1844.

## Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Friday Nov. 8

Wednesday Nov. 13

Friday . 15

Wednesday . . 20

After Term.

MIDDLESEX.

LONDON.

Tuesday, Nov. 26 | Wednesday, Nov. 27

The court will sit at ten o'clock in the forenoon of each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday the 27th Nov., in London, no causes will be tried, but the court will adjourn to a future day.

\*.\* For the Queen's Bench and Exchequer sittings, see p. 484, ante.

## THE LEGAL ASSOCIATION.

A meeting was held on the 30th October to establish this association. The chair was taken by Sir George Stephen. The objects of the society were stated by Sir George and Mr.

Wire, who particularly noticed that the Legal Association did not set themselves up in rivalry of the Incorporated Law Society. On the contrary, they were anxious to seek the assistance and advice of that Society, and if permitted, would consult them and ask their aid on all occasions. But they contended that there was room for both societies, and if they co-operated together much good must result to the profession.

Sir G. Stephen was elected president, Mr. Wire, Mr. Burchall, and Mr. Pain, (of Dover), vice-presidents, with a council of 24, and power to add 10 to their number.

We have just received the following letter from the secretary of the society:—

**METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.**

*To the Editor of the Legal Observer.*

SIR,—At the last meeting of the interim committee of the above association, held on the 29th inst., (and whose duties then closed, having been superseded by the council appointed at the general meeting yesterday,) I was desired to address you upon a report which has been somehow or another industriously circulated, that the association has been got up in *opposition* to the Incorporated Law Society, and than which nothing can be more unfounded and untrue. The very fact of the *objects* of both being *similar*, carries a denial of opposition on the face of it, and as was stated yesterday at the general meeting, by our worthy chairman and president, Sir George Stephen—"It is impossible to conceive what objection on earth there could be even if twenty societies were all in full operation for the accomplishment of our objects; it would be a subject of congratulation rather than for regret or ill feeling." I assure you, sir, that this association intends, and intended from the first, to solicit the aid, advice, and assistance of the Incorporated Law Society upon all matters of importance touching the furtherance of its objects; considering that institution the parent society, possessing as it does, both power and influence, this association is bound not only for the interests of the profession, but is of itself most desirous that an harmonious feeling should at all times exist, and I trust that this declaration will at once check and remove the impression that has been unwarrantably and mischievously circulated.

I shall do myself the pleasure next week of forwarding you a copy of the rules as passed, with the list of the executive for the ensuing year.—I am, Sir, your obedient servant,

E. CLARKE, Secretary.

5, Bedford Row, Oct. 31, 1844.

**TO THE SUBSCRIBERS OF THE  
LEGAL OBSERVER.**

MANY of our readers will recollect that, fourteen years ago, when the Legal Observer was established, large and sweeping alterations were projected in the Law and Practice of the

Courts. It was our province to combat the various attempts to create new Local Courts and a General Registry of Deeds. Our unceasing labours on those subjects have hitherto been successful. We also opposed the establishment of the Court of Review in Bankruptcy, and we have lived to see that jurisdiction virtually re-absorbed in the Court of Chancery. All other measures of Law Reform have also been freely discussed down to the present time. The earliest intelligence has been afforded of every scheme of innovation; and whilst every objection has been urged against pernicious measures, real improvements have been suggested and supported. So much for the *past*.

Looking to the *future*, it is manifest that most important alterations are still in contemplation. Amongst other signs of coming change may be noticed the establishment of the Law Amendment Society, the announcement of the Law Review, and the formation of another Legal Association. We shall therefore devote ourselves to the immediate investigation of every new measure, whether of real or pretended improvement. We shall promptly oppose every project which may be injurious to the true interests of the Profession, identical as they are with those of the public. From whatever political party such measures may proceed, it will be our duty to give them a rigid examination, and to consider their effect,—not in relation only to their *theoretical* pretensions, but their *practical* bearing on the administration of justice. The proposed Consolidation and Amendment of the Law of Bankruptcy and Insolvency will receive the earliest attention.

The time, indeed, has arrived, when it is desirable to review the effect of the numerous changes which have taken place within the last fourteen years,—some of our Contributors and Correspondents have desired a subject to be suggested on which they may render service to the cause in which we are engaged. We propose this:—What good has resulted, 1st to the Suitors, and 2nd to the Practitioners, from the alterations in the Law and Practice in and since the year 1830? We shall consider fairly both sides of the question; and we think that future Reforms should be considered with reference to the experience of the last fourteen years; and ample means of applying that test will be found in the pages of the Legal Observer.

Whilst due space in the work will thus be devoted to projected changes, we shall continue immediately to notice whatever has been carried into effect. All new Statutes and Rules of Court will be given,—every important Decision stated,—and the earliest information obtained of all matters in any way affecting professional practice.

In order to complete the 28th volume with the Title-page and Contents, we have added an extra half-sheet, without any increase of price.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, NOVEMBER 9, 1844.

—————" Quod magis ad nos  
Pertinet, et necesse malum est, agiturus.

HORAT.

**THE ALTERATIONS MADE IN THE  
LAW BY THE ACTS FOR RE-  
GULATING JOINT STOCK  
COMPANIES.**

No. I.

EXISTING COMPANIES.

It is now our intention to inquire into the alterations which have been made by the acts of the last session in the law of joint stock companies. We have already reprinted the act of last session for their registration and regulation, (7 & 8 Vict. c. 110, 28 L. O. 409.) We shall, in the present number, print the substance of the act for facilitating the winding up the affairs of a joint stock company, (7 & 8 Vict. c. 111,) and it will be seen that they have made some important changes in the law relating to this subject. They appear to us to remedy many of the defects which have long existed, and to which we called attention in a former volume.\* We then pointed out what we considered to be the remedy which could be applied, and said that it consisted in one word, *publicity*. We shall hereafter see how far and to what extent our requisition in this respect has been complied with. On the present occasion we are only desirous of turning the attention of our readers to one point, viz., how far existing companies are at present affected by the acts. It is obvious, that in the first instance the second act cannot apply to them at all, however

valuable its provisions may be hereafter. But the first act has a direct bearing on all existing companies, (except banking companies, schools, and scientific and literary associations, and friendly societies, loan societies, and benefit building societies, duly enrolled,) and as any failure in the requisitions imposed on these societies is punished by penalties, there is of course some anxiety felt as to what is to be done.

We may remove this at once, by stating that by s. 58 of the Regulation Act as to all joint stock companies to which the act applies, existing on the 1st day of November, 1844, whether incorporated by act of parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever, or in any other way whatever, it is enacted, that *within three months* from the 1st day of November, the directors, managers, officers, and others having the direction of such companies, shall register such company at the office for the registration of joint stock companies, and for this purpose shall make a return according to one of the schedules annexed to the act, of—1, the name of the company; 2, the purpose of the company; and 3, the principal or only place for carrying on its business; and that on such registration every such company shall be entitled to have a certificate of registration, *without paying any fee* either for such registration or for such certificate. This certificate is however not to be considered a certificate of complete registration, so as to confer on any such company the power or privileges of the act to which we shall hereafter advert.

\* See a series of articles on this subject in our 26th volume.

It is to be observed, that on failing to register as directed within the said period, every company shall forfeit for every offence a sum not exceeding 50*l*.

It is to be remarked, that this section relates to *all* companies, whether established by act of parliament, charter, or letters patent, or otherwise; but as a general rule, and except in some few particulars which we shall hereafter notice, this act is not to extend to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, water work, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into effect without obtaining the authority of parliament; neither is this act, except in certain particulars, to extend to any company incorporated, or which may hereafter be incorporated, by statute or charter, nor to any company authorised or which may hereafter be authorised by statute or letters patent, to sue and be sued: (s. 2). The main object of this act is to regulate companies established by deed of settlement, or other less formal document.

The form of the return to be used is given in one of the schedules of the act: it is said in s. 58 to be schedule I; but schedule I relates to the form of the certificate of share,—and it is quite clear that it refers to schedule G. This, then, is the form which must be filled up by all existing companies. All doubt as to this has been entirely removed by a publication in the London Gazette of the 29th of October last. By s. 17, the Board of Trade may make regulations as to the form of the return, and may alter and vary the schedules, such regulations to be inserted in the London Gazette; and, accordingly, in the above-mentioned Gazette a publication has been made by the order of the Board of Trade, giving the proper forms of the schedule to be employed, to which we refer such of our readers as are interested in making a return.

The time at which every existing company, then, must make a return of the above particulars, extends to the 30th of January next, as the three months are calendar months: (s. 3).

The authentication of the return of newly formed companies is provided for by s. 16. Until a certificate of complete registration is obtained, the promoters of the company, or their solicitor, shall make the returns; and after complete registration, the directors are to make the returns; and one or

more of such promoters, or their solicitor, or such directors, shall sign such return; after complete registration, the returns are to be sealed with the seal of the company.

The word “promoter” applies to every person acting, by whatever name, in the forming the company at any period prior to complete registration. We apprehend that as some difficulty may arise as to where the term applies, the return, as to an existing company, should be signed by the solicitor.

But this clause does not apply to existing companies.

So far the only compulsory clause on all existing companies is the 58th. We shall, in future articles, inquire as to what they may do under the act; we have now stated what they must do.

We shall only add a few words as to the place in which joint stock companies are to be registered. This is provided for by s. 19, which enacts that the Board of Trade may appoint a registrar of joint stock companies, and, if necessary, an assistant registrar, clerk, &c., and the Lords of the Treasury are to fix such salary as may be proper; and such registrar is to have a seal of office, to be used in the authentication of all matters relating to his office: the hours of attendance are to be from ten till five, and at such other times as the Board of Trade shall appoint, and attendance is to be given every day, except Sundays, Good Friday, Christmas Day, or other general holiday.

It is to be observed, that the joint stock companies, in their subsequent stages, are to pay the expenses of this office by fees, and the balance is to go to the consolidated fund. (s. 21.)

In the Gazette of Tuesday, the 29th of October, there is a further notice that the office will be opened on the 1st of November, and stating that further information may be obtained on application to the registrar, 15, Duke Street, and stating that forms may be had at Mr. Smith's, 49, Long Acre.

It appears to us only necessary to observe on this branch of the subject, that it is advisable that every company within the scope of the act should obtain a certificate of provisional registration as *speedily as possible*, as by s. 24, in some instances the transactions in the transfer of shares, and such matters, would expose the company to penalties.

## THE PROPERTY LAWYER.

## LEGACY TO EXECUTOR.

WHERE a legacy is given to an executor, *primâ facie* it is given to him for his trouble, and if he *refuses* the office, he is not entitled to it. *Piggott v. Green*, 6 Sim. 74. In a late case, a testator appointed Mr. Ireland and three other persons executors of his will, "and he gave to each of them the sum of 500*l*." With respect to Mr. Ireland, the Master, by his report, found as follows: "Ireland died in 1841, in his 82nd year, without having proved the testator's will, having been, during the whole period which intervened between the time of the said testator's death and his own death, from mental as well as bodily infirmity, wholly incapable of undertaking the duty of executor to the said testator." The question was, whether Mr. Ireland was, under the circumstances, entitled to his legacy of 500*l*. Lord Langdale, M. R., was of opinion that the legacy was not payable. *Hanbury v. Spooner*, 5 Bea. 630.

## COPYHOLD ENFRANCHISEMENT—COSTS.

By an indenture of 23rd Dec. 1843, to which a commissioner under the act was a party, the Archbishop of Canterbury, as lord of the manor of Lambeth, in consideration of 1,239*l*. paid into the Bank of England, under the act, by R. P. Roupell, a tenant of certain copyhold lands holden of the manor, conveyed those lands to Roupell and his heirs, absolutely enfranchised and discharged from all customary payments. The Archbishop now presented his petition, praying that the costs of paying the purchase money into the bank and of this application might be taxed, and that the same, when taxed, might come out of the sum of 1,239*l*. Sir K. Bruce, V. C., said, that, looking at the whole act, he was of opinion that he had jurisdiction to make the order as prayed. *Ex parte the Archbishop of Canterbury, in re Copyhold Enfranchisement Act*, 1 Collyer, 154.

## POWER TO DISBAR.

WE have in a former volume\* stated the cases as to the power of the bench over the bar, and we have recently adverted to the same subject.<sup>b</sup> As, however, it still occupies the

public attention, and fresh cases appear to occur to keep it alive, we may shortly notice two real cases which have occurred before the Privy Council relating to it. The first is the case of *Smith v. The Justices of Sierræ Leone*, 3 Moo. 361, in which a practitioner duly admitted in the colony had been fined, imprisoned, disbarred, and struck off the rolls of the court, and ordered to pay certain costs. The circumstances of the case are too long for our purpose, but the chief offence appears to have been, that Mr. Smith, who was both attorney and advocate in a cause, objected to certain evidence being tendered, which was, however, read, and a verdict obtained. On a motion for a new trial, a rule nisi was discharged, with costs, which were ordered to be paid personally by Mr. Smith, unless an exculpatory affidavit was filed. Mr. Smith being in prison, the order was there served on him, and he requested the chief judge to appoint a clerk, or some other person, a commissioner, to enable him to be sworn to such affidavit. Mr. Smith was informed, by letter, that the court had refused his application. Shortly afterwards, he was served with a rule to show cause why he should not be struck off the rolls of the practitioners; and finally he was struck off the rolls. This appears to have been wholly unjustifiable, and so it was considered by the judicial committee of the privy council, who were clearly of opinion that the order for striking off the rolls must be rescinded.

In the second case, *In re Downie and Arrindell*, 3 Moo. 414, it is necessary to state the circumstances, which were these: On the 16th of January, 1840, the Hon. Thomas Norton, the First Puisne Judge, commenced an action against John Emery, an inhabitant of Demerara, as the editor and proprietor of a newspaper called the *Berbice Advertiser*, for a libel published in that journal, in which it was alleged, that the First Puisne Judge had been guilty of delays, in postponing the sittings of the Roll Court, and keeping that court shut at his pleasure, to the injury and prejudice of her Majesty's subjects in the colony. The citation was in common form, calling upon the defendant to appear on the 3rd of February following, at the Roll Court. The claim and demand set forth the particulars of the plaintiff's complaint, and according to the Dutch Roman Law, claimed the *amende honorable et profitable*, the former importing an apology to be made by the defendant, the latter, payment of damages in money. A copy of this claim and demand was served on the defendant. On the 31st of January, three days before the defendant was cited to appear before the Roll Court, Mr. Norton was served with a copy of a petition to her Majesty in council, dated the 30th of that month, and purporting to be from John Emery, the defendant to the action. This petition, after stating the nature of the action, contained a suggestion that Mr. Norton was about to preside in the Roll Court at the trial of the action so commenced by him, and prayed that her Majesty would interdict him from pre-

\* 1 L. O. 337.

b 28 L. O. 465.



ending in any manner, directly or indirectly, in the said action, and that the summons and citation issued therein might be cancelled and withdrawn, free of costs, with further interdiction and injunction not to do or attempt the like in future. The petition also prayed for payment of the petitioner's costs in the matter by the said judge. The petition was served on the judge by the provost marshal, the sworn officer of the court, whose duty it was to serve and execute mandaments, executions, and provisions of justice issued by the court. The service of such petition not being in the nature of any proceedings of the court, was no part of his official duty, and the employment of him for that purpose was deemed a studied insult to the judge, and through him to the court. The provost marshal and his deputy were accordingly summoned, and, in the presence of the registrar, required to give information on oath respecting the parties who had employed and instructed them. Upon the examination of these officers, it appeared that the provost marshal was instructed by the appellant, and that the appellant, Downie, required him to make a return of the service, and drew up the form of such return himself; that the appellant Arrindell, though he had not signed the instrument for that purpose, was present in the office of the provost marshal at the time the instruction respecting the service and return of the petition was given, and, as well as Downie, was retained and acted as counsel for the defendant Emery. The First Puisne Judge, on the 6th of February, 1840, brought the circumstance of the service of the petition and its contents, as well as the part taken by the appellants, before the full court. The appellant Downie was present, but the other appellant, Arrindell, was absent, as it was alleged, without leave, and in disobedience to the standing rule of the court, which required all persons practising as advocates, to be present at the sittings of the court. The court, having commented on the propriety of the proceeding, observed, that the defendant, Emery, had an undoubted right to petition the Queen in council, for any purpose, if he thought fit, but that the service of such a petition on one of the judges, and by the officer of the court, could only be considered as a studied insult to the court, and called upon Downie to explain his conduct in respect thereof, to which he replied, "that he considered he was acting in the line of his duty; that he had no intention whatever of insulting the judge; and that he had no apology to make." After deliberating on the proper course to be pursued, the Chief Justice pronounced the following judgment:—"That it is considered by the court, that the conduct of John Downie is insulting to the judge, and an insult and contempt to the court; and it is ordered, that the said John Downie, for such insult and contempt by him committed, be suspended from all practice and privilege of an advocate admitted to practise before this court, for the space of six calendar months." At the same time, the court made

an order for the attendance of the appellant Arrindell, on the 8th instant, and in the mean time suspended him from practising, and all other privileges of a barrister. At the sitting of the court on the 8th instant, the appellant Arrindell appeared, when he was called upon by the Chief Justice to give an explanation of his conduct, when the appellant read a written protest against the jurisdiction of the court, and requested time to prepare a defence. This the court refused, and the appellant declining to give any further explanation, the Chief Justice pronounced him to be suspended from all practice for the space of six months on their part. Lord Brougham delivered judgment as follows:—"Their lordships are of opinion, that the orders of suspension ought not to have been made; and they will advise her Majesty to reverse them. They make no order whatever as to the erasing—that would be clearly advising her Majesty to pronounce a censure, if not a stigma, upon the proceedings of the court. Nor do their lordships intend to intimate any opinion upon the course that the learned counsel advised his client to take, either approving or disapproving of it; they are of opinion that the orders ought not to have been made; that it was not such a contempt as to warrant the order made upon it, which we, therefore, simply reverse."

## CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

### WINDING UP JOINT STOCK COMPANIES.

7 & 8 VICT. c. 111.

This is an act "for winding up the Affairs of Joint Stock Companies unable to meet their pecuniary engagements." It received the Royal Assent on the 5th Sept.

The preamble recites that it is expedient to extend the remedies of creditors against the property of such joint stock companies or bodies as herein-after mentioned when unable to meet their pecuniary engagements, and to facilitate the winding up of their concerns; and that it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of any such companies or bodies, and for ascertaining the causes of their failure.

The following is an

#### ABSTRACT OF THE ACT.

1. If any incorporated company or trading company, or any other body or persons associated together for commercial or trading purposes, as herein described, shall commit any act which is hereby deemed an act of bankruptcy on the part of such company, a fiat in bankruptcy may issue against the same, and be prosecuted in like manner as against other bankrupts, subject to the provisions herein-after made.

2. Bankruptcy of company not to be con-

strued to be the bankruptcy of any Member individually.

3. Service of adjudication of bankruptcy on company, and surrender, how to be made.

4. Declaration of insolvency in pursuance of a resolution of the board of directors under the common seal of the company, or signed by the chairman, and attested by the solicitor of the company, and filed in the office of the secretary of bankrupts, to be an act of bankruptcy.

5. Company not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue out execution, within fourteen days after notice requiring payment, an act of bankruptcy.

6. Company disobeying order of any court of equity, &c., for payment of money after service of order for payment on a peremptory day fixed, an act of bankruptcy.

7. Creditor filing an affidavit of debt in one of the superior courts, and issuing a writ of summons thereon, if the company do not, within a month, pay, secure, or compound to the satisfaction of the creditor, or satisfy a judge of their intention to defend on the merits and enter an appearance to the action, an act of bankruptcy.

8. Assignees of the estate of a company may maintain action to recover a debt; and any person may claim under a fiat against a company any debt due on the balance of accounts.

9. Member's share not to be set off against a demand which the assignees of the estate and effects of a company adjudged bankrupt may have against such member.

10. No action, &c. by a creditor of a company, so far as concerns his recourse against the person or property of any individual member, to affect his right to issue or prove under a fiat against the company for any debt remaining unsatisfied; and a fiat, or a proof or proceeding thereon, not to affect any action by a creditor, so far as concerns his recourse to the person or property of any individual member.

11. The law and practice in bankruptcy to extend, so far as applicable, to fiats under this act.

12. The court may order the directors of a company adjudged bankrupt, &c., to prepare and file a balance sheet and accounts, and to make oath of the truth thereof; and the court may make allowance out of the estate for the preparation thereof.

13. Persons ordered by the court to prepare the balance sheet to be under the like obligation to surrender at the last examination under the fiat, and to submit to be examined, &c., and to incur such danger or penalty for not conforming, &c., as is now provided against a bankrupt.

14. Persons ordered to prepare the balance sheet to have the same freedom from arrest, &c., as a bankrupt.

15. The court, before adjudication, may summon any person, whether a member of the company or not, to give evidence as to the trading and any act of bankruptcy; and, after adjudication, the court may summon and ex-

amine any person who is suspected to have property of the company in his possession, or to be indebted to the company, &c., and compel him to produce books, &c.

16. As to costs where a person summoned under a fiat against a company was a member thereof.

17. Penalty on members (other than those who are ordered to prepare the balance sheet), and on other persons, wilfully concealing the estate of the company, 100*l.*, and double the value of the estate concealed; and allowance to persons, other than members of the company, for making discovery thereof.

18. The court, after adjudication, may order any treasurer, &c., or solicitor or agent of the bankrupt, to deliver to the official assignee, or to the Bank of England, all monies and securities in his custody or power, which he is not by law entitled to retain as against the bankrupt or his assignees.

19. If any person disobey any rule or order of the court duly made, the court to commit him to prison, there to remain until he conform, or until the court or Lord Chancellor shall otherwise order.

20. The court may direct the assignees of the estate of a company adjudged bankrupt to petition the Court of Chancery for directions for winding up the affairs of the company, upon which petition an order of reference may be made, and accounts taken, and upon the confirmation of the master's report a receiver may be appointed.

21. The Court of Chancery may make order in individual claims of members in respect of the transactions of the company.

22. The Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, to make rules and orders as to the form and mode of proceeding for settling and enforcing contribution to be made by members of a company, and the practice to be observed by the Court of Chancery and the Masters in such proceeding.

23. The act 41 Geo. 3, (U.K.) c. 90, to extend to decrees or orders made by the Court of Chancery in any suit under this act.

24. Decrees or orders made under this act by the Court of Chancery may be registered in Scotland, and execution may be had as upon a decree interponed upon a bond, with a clause of registration.

25. Previous to passing the last examination the court shall inquire into the cause of the failure of a company, and after the last examination shall cause a copy of the balance sheet to be transmitted to the Board of Trade, and certify the cause of the failure, and any special circumstances, and annex a copy of any examinations deemed material.

26. After the court shall have certified to the Board of Trade the cause of the failure of such company, the Queen, upon the recommendation of the Board of Trade, may revoke and make void any privileges granted to the company, and determine the company.

27. After the court shall have certified to the

Board of Trade the cause of the failure of any company adjudged bankrupt, the Board may institute prosecutions in certain cases.

28. Until determination of company by the crown, it shall be considered as subsisting for the original purposes, and, notwithstanding such determination, shall be considered as subsisting so far as necessary for winding up.

29. Notwithstanding determination of company in any other manner, the same to be considered as subsisting so long as any matters remain unsettled.

30. Any member of a company adjudged bankrupt, with knowledge of or in contemplation of a bankruptcy, destroying or falsifying books, &c., of the company, or making false entries, &c., guilty of a misdemeanor.

31. Construction of the act.

32. Commencement of act Nov. 1, 1844.

#### SCHEDULE (A.)

No. 1. *Declaration of Insolvency by incorporated or associated Commercial or Trading Company.*—By virtue of a resolution duly passed in that behalf on the day of at a Board of Directors of [here state the name or style of the company], duly summoned for that purpose, it is hereby declared, That the said company [or society, &c., as the case may be], is unable to meet its engagements.

Dated this day of in the year

(Common seal of the company, or, if the company have no common seal, the signature of the chairman of the Board of Directors who was present at the passing of the resolution.)

Witness G. H., attorney [or solicitor] of the court of and attorney [or solicitor] of the said company, and attesting witness to the execution hereof as such attorney [or solicitor].

No. 2. *Minute of Resolution of a Board of Directors of incorporated or associated Commercial or Trading Company, authorizing a Declaration of Insolvency.*—A resolution was duly passed on the day of at a Board of Directors of [here state the name or style of the company], duly summoned for that purpose, that the said company was then unable to meet its engagements, and that a declaration of insolvency should be forthwith filed in the office of the Lord Chancellor's Secretary of Bankrupts, in the form directed by the statute in that case made and provided.

(Common seal of the company, or, if the company have no common seal, the signature of the chairman of the Board of Directors who was present at the passing of the resolution.)

Witness G. H., attorney [or solicitor] of the court of and attorney [or solicitor] of the said company, and attesting witness to the execution hereof as such attorney [or solicitor].

#### NOTICES OF NEW BOOKS.

*Report of the Select Committee of the Royal Institute of British Architects on Dilapidations.* London: 1844. J. Weale, 59, High Holborn.

THE subject of Dilapidations and Fixtures is one which remains, to a certain degree, unsettled, notwithstanding the numerous cases in the books, in which various points have been from time to time decided. The fact is, that the law upon the subject is sufficiently distinct; the difficulty being, to bring the various items, constituting dilapidations and fixtures, within the scope of the decisions; for it is notorious that in almost every case of dilapidations the evidence on the one side and on the other is almost, if not entirely, balanced,—so much diversity of opinion existing amongst surveyors upon the point. It is therefore with much satisfaction that we see a publication issuing from a body, "The Royal Institute of British Architects," laying down the practice of that profession upon this very important subject. It appears that the council of this incorporated society deemed it desirable to appoint a committee

"To report as to the usual practice of the profession in regard to dilapidations and fixtures, as well civil as ecclesiastical, whether premises held on lease, or by yearly tenures; and upon the equitable construction of the terms usually employed in covenants of leases, whether special or general, to repair, &c., defining, as nearly as possible, the respective obligations of landlords and tenants; so as to form a distinct and clear body of evidence and opinion, which may serve the profession as a work of reference in such matters."

The members of the committee thus appointed were some of the leading architects and surveyors in the profession, and are well known as being most competent to give a wise and experienced decision. The subject is treated in a systematic way. In the first instance, the forms of covenants introduced into leases of leading public bodies, and large land owners, are first given, and then the effect of those covenants as to dilapidations is fully considered; and this is perhaps the most useful part of the treatise or report, for a definition of dilapidations, the great stumbling block in all cases, is laid down with sufficient distinctness.

"In the first place, the committee are of opinion that dilapidations are, in usual practice, considered to be those defects only which have arisen from neglect or misuse, and not to

extend to such as indicate age, so long as the efficiency of the part still remains; but if the effects of use, or age, have proceeded so far as to destroy the part or its efficiency in the structure, this argues neglect or misuse, it being the presumption, that, at the commencement of his term, the tenant was satisfied that every part was sufficiently strong to last to its close."

Details of the works in different trades are given in the form of a specification, meeting those cases where the covenant of a lease requires the efficiency of every part of the premises to be maintained. The tables given will be of great service to surveyors generally, and also to legal practitioners; this publication being the only one which gives such information.

The subject of Ecclesiastical Dilapidations is exceedingly well treated, and the case of *White v. Metcalfe*, 10 Barn. & Cress. 229, is very judiciously introduced to show the extent of repairs an incumbent is liable for. The liability also of yearly tenants, and tenants of farm buildings, has separate consideration. The second portion of the report is upon Fixtures, and is full of useful information, which, if not altogether new, is reduced to greater precision than has been done before.

Throughout the report, it is evident that the committee have been fully acquainted with the effect of the legal decisions upon the various questions; and in showing the practice of their profession, we are glad to find that in no instance is that practice as laid down contrary to any of these decisions. The full and exact particulars given under both heads of Dilapidations and Fixtures cannot fail to render this publication a very useful manual, not only for the architect and surveyor, but also for the lawyer.

Before concluding our remarks, we cannot omit referring to an observation contained in the address of the council of the institute, which precedes the report, thinking that the recommendation in it might be adopted with great benefit both to landlord and tenant, and be the means of preventing much litigation: the council propose "that, as a preliminary to the execution of leases in general, the premises to be leased should be surveyed, both on the part of lessee and lessor, and that a schedule should be drawn up, signed by them or their agents, specifying the actual state of every part of the building, by reference to which the dilapidations should be assessed at the end of the term."

Such a document universally accompanies agreements for the occupations of houses in France, under the name of the 'état des lieux,' and its adoption is strongly recommended by the council to the consideration of the profession at large, as a means of simplifying a question usually attended with much complexity, and seldom satisfactorily determined. We certainly think that the present form of the covenants to repair, usually inserted in leases, are too strict and oppressive towards the tenant. With a litigious landlord, the best tenant can scarcely escape from an extortionate demand in the shape of dilapidations. The plan pursued in France would render full justice to the landlord, at the same time would limit his claim upon the tenant to a reasonable extent. We think it would be a still further improvement if a plan were always put upon a lease.

As this publication may be but little known to the profession, we strongly recommend a perusal of it to all our readers.

*An Act (7 & 8 Vict. c. 96) to amend the Law of Insolvency, Bankruptcy, and Execution; and an Act (7 & 8 Vict. c. 70) for facilitating Arrangements between Debtors and Creditors; accompanied by Explanatory Notes on the various sections: also, the New Rules and Orders in Insolvency; with an Analysis of the Acts, and a Copious Index.* By RICHARD CHARNOCK, Esq., of the Inner Temple, Barrister-at-law. London: Owen Richards. 1844. pp. 92.

AMONGST the various editions of the new Bankrupt and Insolvent Acts, we have to notice one by Mr. Charnock, who edited the Act for Abolishing Arrest on Mesne Process, (1 & 2 Vict. c. 110,) and the two acts passed in the last session may be considered as a continuation of the same branch of law. Mr. Charnock observes,—

"That the present Act (7 & 8 Vict. c. 96) inflicts a terrible blow to credit generally, and more especially to that credit which is given by tradesmen whose transactions are of an amount not exceeding 20*l*. The statute has an immediate operation, not only on all debts contracted, but upon all actions and proceedings already commenced to enforce the payment of debts. This statute, no doubt, seems and is a hard measure of justice; and it cannot be expected but that creditors, who have been for years looking forward to the passing of some general remedial measure like the County Courts Bill, by which the recovery of debts would be facilitated and the expenses lessened, would be disappointed by a law hurried through parliament at the close of a protracted session,

abridging the rights of creditors, and affording no equivalent for such abridgment. These provisions savour of an *ex post facto* law, and it cannot be denied, that in fairness, if such a measure were deemed necessary, its operation should have been postponed to some reasonable future period.

"Now, a man may not only file a declaration of insolvency, but may issue a fiat in bankruptcy against himself, selecting, of course, his own time for the purpose. There is no remedy against the person for any debt not exceeding 20*l.*, unless the judge who tries the cause shall grant a certificate that the debt has been contracted fraudulently; and will any debtor who has so contracted a debt allow a cause to be tried, to afford an opportunity to his creditor to obtain such a certificate? Of course not. He will consult an experienced attorney, who will warn him against such a rock, and the result will be that the defendant will consent to a judge's order, or suffer judgment by default. On the whole, it is evident that all the provisions are ill prepared, full of loop-holes, and they will of necessity give rise to much litigation in ascertaining their just meaning and construction; far better would it be to repeal all the statutes on bankruptcy and insolvency, and pass one general law in the nature of a code that would include all the provisions that are necessary and expedient."

Mr. Charnock has added to the new statutes several notes and explanatory observations, which will be useful to the practitioner; and an analysis and index accompany the statutes, which will afford facilities of reference to the several enactments therein.

The following are examples of Mr. Charnock's notes, of the utility of which our readers will readily judge:—

Sec. 1, note *a*. "By the 5 & 6 Vict. c. 116, s. 1, (passed 12th August, 1842,) an insolvent was obliged, as a preliminary to the presentation of his petition, to give notice, in the form pointed out by that act, to one fourth in number and value of his creditors, and to cause such notice to be advertised twice in the London Gazette and twice in some newspaper circulating within the county where such insolvent resided.

"The present section, however, is an improvement on the prior statute, as it enables the insolvent at once and without delay to present his petition without any advertisement or notice to his creditors."

Sec. 2, note *b*. "The form of petition pointed out in this section differs much from that required by the 5 & 6 Vict. c. 116. There is no form of schedule given by the present act; and therefore the schedule to be annexed to the petition must contain the several particulars pointed out by the 5 & 6 Vict. c. 116, s. 1: for which see Rules, Orders, and Forms, *post*.

"As both the petition and schedule must now be verified by the petitioner on presentation,

great care should be taken that the statements made therein are accurate, and also that the form of the petition and affidavit are precisely such as are required by this act, otherwise the petitioner will incur the risk of having his petition dismissed."

Sec. 6, note *e*. "Prior to this clause, where a person was in custody, whether on *mesne* or *final* process, his only remedy, if not a trader, was to apply to the Insolvent Debtors' Court, which court had power, under the 1 & 2 Vict. c. 110, s. 36, to admit to bail, and give relief in the manner pointed out by that statute. The present clause, however, is intended to give power to the Commissioners in Bankruptcy to discharge persons in execution for debt, whether traders or not, provided, if a trader, the debts are under 300*l.* But this section does not seem to apply to the case of persons who may be in custody on *mesne* process, (for instance, under a judge's order, obtained under the powers of the 3rd sect. of the 1 & 2 Vict. c. 110), who must still, it is submitted, apply to the Insolvent Debtors' Court for relief, by bail, &c. Nor does this section seem to apply to persons who are in execution for damages (not being a debt), for the words of the section are, 'any judgment obtained in any action for the recovery of any debt.' Nor does this section apply to traders whose debts amount to 300*l.*, who must still avail themselves, in the ordinary way, of the bankrupt or insolvent debtors' laws. The latter part of this clause is somewhat obscure, for it states that after the time allowed by any such interim order or any renewal thereof, such prisoner shall not, by such discharge, be protected from being again taken in execution upon such judgment. It is apprehended that this must mean, in case the petition be dismissed, or the final order be not granted. In that sense, this provision was necessary; as under ordinary circumstances, a discharge from execution operates as a satisfaction of the judgment.

"Why should this clause be confined to persons in execution?"

Sec. 12, note *k*. "The provisions in this section should have gone further; they are merely to this effect, that where the assignee accepts a lease, or an agreement for a lease entered into by an insolvent, the insolvent shall not be liable to pay any rent or perform any covenants subsequent to such acceptance, and in case the assignee declines to determine to accept, the lessor may apply to the commissioner, and any order made shall be binding on all parties. Has the commissioner, under this provision, power to discharge the insolvent from the rent, &c., which may have accrued due from the date of the petition up to the time when the assignees may accept the lease? or up to the time when they decline? And, again, has the commissioner power to discharge the insolvent from the liabilities of a lease, or an agreement for a lease in case the assignees decline to accept the same; if not, and it is ap-

prehended the commissioner has no such power in either case, then it seems desirable that insolvents should be protected from such outstanding liabilities, particularly as the bankrupt and insolvent debtors' laws extend to annuities, &c. There are similar clauses in the Bankrupt Act, 6 Geo. 4, c. 16, sect. 75; and in the act for the abolition of arrest, 1 & 2 Vict. c. 110, sect. 50.

"An assignee who accepts a lease, &c., though this operates to discharge the insolvent, may assign the lease to an insolvent person, to exonerate himself from future liability for rent, &c. *Onslow v. Corrie*, 2 Madd. 330.

"Where a lessee becomes bankrupt, a surety joined in the lease with him is still liable to the lessor for breaches of covenant occurring between the date of the commission and the delivery up of the lease by the lessee. *Tuck v. Tyson*, 6 Bingh. 321."

## RENEWAL OF ATTORNEYS' CERTIFICATES,

*On the last day of Michaelmas Term, 1844.*

### Queen's Bench.

1. Bray, Philip, Bromyard.
2. Catten, Charles Edward, Percy Circus, Pentonville; and Harpur Street.
3. Coombs, Henry, Salisbury.
4. Coombe, Alfred, Wilton.
5. Dukes, Thomas William, 35, Norfolk Street, Strand; and Child's Place, Temple Bar.
6. Edwards, John Henry, Ipswich.
7. Foulkes, John Faulkener, Moriton Green, Lancaster.
8. Gifford, John Attersoll, Plymouth.
9. Hutchinson, Thomas, Hartlepool.
10. Judson, Charles Bower, Ware.
11. Lawrance, John Bushley, 1, Hampton Cottages, Commercial Road; Peckham; and Camberwell.
12. Lucas, Robert de Neufville, 13, Aske Terrace, Hoxton; and Bridge Street, Southwark.
13. Marchant, Henry, 23, St. Mary Square, Lambeth; and Southwark Bridge Road.
14. Marchant, Henry, 13, George Street, Mansion House; and 44, Southwark Bridge Road.
15. Meade, Henry White, North Curry, Somerset.
16. Pulsford, William, Newtown; and Clarendon Square.
17. Peach, Robert, Trusley; and Quarndon.
18. Rastall, Richard, New Sleaford; and Liverpool.
19. Smalley, Christopher, Hawarden.
20. Sutton, William Lucas, 11, Newton Street, Shoreditch; and 24, Whitmore Road.
21. Thomas, Benjamin, Tewkesbury; and New Orleans.
22. Tinsley, Charles, Rotherham.
23. Vickery, James, Wellington Terrace, Waterloo Road.
24. Wheeldon, William Parker, Alvaston.

### *Added to the List pursuant to Judges' Order.*

25. Rowles, George Samuel Sargent, 14, Dean Street, Red Lion Square.
26. Dawson, John James, 32, Chapel Row, Holloway.
27. Ward, William Cook, 8, Cook's Row, Pancras Road.
28. Vevers, Thomas, of Newcastle-under-Lyme.
29. Luckman, Thomas, Hulme, near Manchester.

## CENTRAL CRIMINAL COURT.

THE following days have been appointed for holding the Sessions for the jurisdiction of the Central Criminal Court, for one year:—

1844.		Monday.	
Monday.	25th November.		Monday.
			16th December.
1845.			
6th January.	3rd February.		16th June.
3rd March.	7th April.		7th July.
12th May.			18th August.
			15th September.
			27th October.

## THE APPOINTMENT OF MR. JUSTICE ERLE.

A fortnight ago we announced that Mr. Justice Erskine had retired from the Court of Common Pleas, on account of the state of his health. We have already and repeatedly stated that he was an able and painstaking judge. The vacancy thus created has been filled up by the appointment of Mr. Erle. This, under all the circumstances of the case, is equally honourable to that gentleman and to her Majesty's government. A better appointment could not have been made.

## SUPERIOR COURTS.

### Lord Chancellor.

[Reported by W. FINNELLY, Esq., Barrister at Law.]

LUNACY.—PETITION TO SUPERSEDE.—LUNATIC ABROAD.—COMMITTEE OF THE PERSON.—RESIDENCE OF THE LUNATIC.

*A person duly found to be lunatic, having escaped from his committee and gone abroad, required to return within the jurisdiction before the hearing of his petition to supersede the injunction.*

*Where a person is once duly found lunatic, the principle on which the Lord Chancellor acts is, to require a perfectly clear case of*

*restored intellect to be made out before he sets aside the inquisition; and on that his Lordship satisfies himself, not merely by affidavits, but by personal examination of the lunatic, who must therefore be within the jurisdiction.*

*When the Lord Chancellor is satisfied that residence abroad is more conducive to the lunatic's health and restoration of intellect, he will permit it, and appoint a person as joint committee to accompany the lunatic, if the proper committee is disagreeable to him.*

David Ouchterlony Dyce Sombre, son of General Dyce, a German, by a woman of Hindostan, came to England soon after attaining the age of 21, in 1838, bringing with him a large fortune, and in 1840 he was married to the Hon. Miss Jervis, daughter of Earl St. Vincent. Having shown undoubted symptoms of insanity after the marriage, he was confined for some time in Hanover Lodge, Regent's Park, but showing no signs of amendment, a commission of lunacy was issued against him, at the instance of his wife, in 1843, and he was found to have been of unsound mind from October 1842, and his wife was appointed committee of his person, (with an allowance of 10,000*l.* a year); but being allowed to travel about, accompanied by a medical gentleman, he escaped to France, and took up his residence in Paris. Application having been made to the French authorities to give the lunatic up, an investigation was had before a tribunal there, which declared Mr. Sombre to be of perfectly sound mind, and the authorities declined to interfere; whereupon he had a petition presented to the Lord Chancellor to supersede the proceedings which had been had under the commission. An objection was made by the committee of the person to the hearing of this petition, until the petitioner brought himself within the jurisdiction. The Lord Chancellor, yielding to that objection, assented to a proposal that the lunatic should come to London, but should there enjoy his liberty during the hearing of the petition, free from all personal restraint, unless he should be guilty of violence. That proposal being agreed to on all sides, the petitioner came to London, and the petition was heard, the arguments being carried on for eight days, and occupying forty-five hours: Sir Thomas Wilde, Mr. Wakefield, and Mr. Walpole contending, for the petitioner,—1st, that he was never insane; but, 2ndly, if he was, that he was so before his marriage, and his wife and her friends knew it, and therefore the marriage was void.

Mr. F. Kelly, Mr. Bethell, Mr. Lowndes, and Mr. Calvert opposed the petition, on behalf of the committee of the person.

Mr. Tiauey and Mr. Lloyd appeared for the committee of the estate of the lunatic, and Mr. E. F. Moore for his next of kin.

The facts of the case and the main points of the arguments are comprised in the following abridgment of the Lord Chancellor's judgment,

(which occupied three hours and a half in the delivery of it).

The Lord Chancellor, in giving his judgment said, the case has been argued at great length and a great quantity of evidence, consisting of affidavits and documents, was laid before the court in support of the allegations on one side and the other. He had read and considered them with that attention, which the importance of the subject appeared to demand. It was a subject in respect to which he had felt much anxiety, not merely on account of its relation to the interest of the individual, whose soundness of mind was in question, but also because it was supposed that the decision of the court, or rather the verdict of the jury on the commission, issued by the court, was at variance with the opinion expressed by those medical gentlemen of great skill and science, who, under the authority of the prefect of police in Paris, made a report with respect to the state of Mr. Sombre's mind in December last.

Two main questions had been argued; *first*, whether Mr. Sombre ever was of unsound mind—whether the finding of the jury could in fact be supported on the evidence; *next*, whether, supposing him to have been of unsound mind at that period, he had now recovered his self-possession and was of sound mind, and fit to be entrusted with the management of his affairs and with the care of his person.

These were the two questions discussed in the course of the extended arguments in this court. With respect to the first, it was material, in consequence of the observations made in the course of the argument, to advert for a few moments to the history of Mr. Sombre:—He was of Asiatic origin, with a mixture of European blood in his veins. He was the son of a German, who had married a native of Hindostan, and was by that marriage connected with the Begum Sombre. At an early age he attracted the notice of the Begum, was adopted by her, brought up in her zenana, and afterwards sent by her to be educated at the house of Mr. Foster, one of the chaplains of the East India Company, who resided at Meerut. With the family of that gentleman Mr. Sombre remained for four years, and he appeared to have profited by the education he received there: for he wrote English fluently, and his blunders appeared to be the result of the haste with which he wrote, and not of any ignorance of the manner in which he ought to express himself. When he became of mature age, he appeared to have been entrusted with the sole management of the territory and fortune of the Begum. He was appointed lieutenant-governor, and in that capacity continued to associate with the English who resided in Meerut. In the year 1836 he went to Calcutta, where he continued to be familiar with English society, and in 1838 he came to England. He remained for some time in London, then visited the continent, returned in 1840, and then married the lady of whom so much has been said in the course of the argument. He appeared, therefore, to have been educated by an Englishman, in English

habits, to have been at all times intimately acquainted with Englishmen and with the manners of English society, and, although an Asiatic by birth and blood, it could not be said that he was not, to a certain and not very limited extent, acquainted with the feelings and habits of English society. Having said this, his lordship, at the same time, felt bound to admit it was quite clear that with one class of the opinions prevalent amongst Asiatics he seemed still to be deeply imbued, and that he had a very strong opinion on the subject of the conduct of married women, amounting to a firm and deep-rooted jealousy. That passion was visible in the course of his courtship in many instances, and it appeared to be too strong to be eradicated by any acquaintance, however extensive, with the habits of European society.

After the courtship had continued some time, the feeling of jealousy broke out so strong that the match was broken off, and Mr. Sombre went to Vienna. He returned at the request of the lady, and the negotiations were resumed. Disputes again took place about the religion in which the children were to be educated, and in a fit of passion he tore to pieces the marriage license, trampled upon it, and sent a challenge to Lord St. Vincent, the lady's father. Two days afterwards he repented of his violence, and sent an apology, it was accepted, the breach was healed and they were married. They then went abroad with the intention of proceeding to Italy, but at Brussels Mrs. Sombre was taken ill, and continued ill for eight weeks, during the whole of which Mr. Sombre treated her with the utmost tenderness and attention. The state of her health rendering it impossible for them to proceed on their tour, they returned to London. They took up their abode in the Clarendon Hotel, mixed in London society, and no symptoms yet appeared of any dissatisfaction with the conduct of Mrs. Sombre. In April of that year they left town on a visit to Strathfieldsay; they afterwards went to Lord St. Vincent's, and then to the Marquis of Hastings' at Donnington Park.

His Lordship, before he alluded to what occurred at Donnington Park, wished to mention the first cause of alarm, the first incident that gave any reason to suppose Mr. Sombre was not perfectly sane. Mrs. Sombre was looking for a volume of Lodge's Peerage; he asked her what she wanted, and on being told, he said that he carried the book in his hand into Bond Street, and held it out to the passers by; until one of them took it from him. Mrs. Sombre was astonished: she said that the affair made, as it well might, a deep impression on her, but she concealed her feelings and they continued their journey to Donnington. Two or three days after their arrival there Mr. Sombre made a confidential communication to the Marchioness of Hastings, stating that Mrs. Sombre had improper connexion with all sorts of persons before her marriage with him and after marriage. When this was made known to Mrs. Sombre it increased the anxiety she

had before felt, and this was not diminished by the evident reluctance with which Mr. Sombre signed a paper, in which he had recalled the whole of the statement he previously made to Lady Hastings. They then returned to London; Dr. Chambers was sent for and prescribed for him, and things went on as usual. In the summer they went to Worthing; here the delusion of Mr. Sombre became more marked, and he at times treated his wife with great violence. They returned to London; there was a favourable change; Mr. Sombre directed his wife to invite whom she pleased to her box at Drury Lane Theatre: she did so, and among others she invited a Mr. Montgomery, with whom she was slightly acquainted. That gentleman did not remain in the box the whole of the evening, but he handed Mrs. Sombre to her carriage. No other incident marked that meeting. Shortly afterwards they were invited to dine with Captain Rous. There was a hole in the street through which they passed, probably made for the gas-meters; Mr. Sombre took notice of it, but in the most general manner, (his lordship said he mentioned these incidents in their order; the application of them would come presently). The autumn approached and they determined on making a tour on the continent. For a short time Mr. Sombre appeared in good health and spirits, but on their approaching Berlin, he, on a sudden exclaimed to his wife, "Mary-Ann, I feel I am going mad, I think I shall die in a madhouse." Arrived at Berlin he treated Mrs. Sombre with extreme violence, accused her of criminal connexion with many persons, told her she had been an opera dancer before her marriage, and that her parents knew it and profited by her labours, and that he admired the skill and talent with which she had contrived to conceal the life she had led, and to exhibit such lady-like manners after mixing in such society. This language and the corresponding violence were repeated more than once, and Mr. Sombre refused to consult any physician. They left Berlin and reached Aix-la-Chapelle on their return. Up to that time Mr. Sombre's accusations were general: he accused his wife of infidelity, but mentioned no one by name. At Aix-la-Chapelle, however, he suddenly exclaimed, "I have at last hit upon the man, it must be either the Duke of Wellington or Mr. Montgomery," that being the first time he had alluded to Mr. Montgomery after the party at the theatre. (His lordship here observed, that he was stating these facts from the affidavit of Mrs. Sombre.) They reached Paris; there Mr. Sombre continued his violence; he accused Mrs. Sombre of making assignations with persons they met at the restaurateur's. They returned to London, and it was during this journey that the mind of Mr. Sombre reverted to the circumstance of Mr. Montgomery being at the theatre, and of his marking the hole in the street when they went to dine with Captain Rous. He accused his wife of infidelity with Mr. Montgomery, and declared that the hole in the street had been opened to destroy himself. All these



charges were repeated and insisted on as realities. These and other things of the same nature coming to the ears of the lady's friends, they called a meeting for the purpose of endeavouring to calm the agitation of Mr. Sombre's mind, and at the same time rescuing the reputation of his wife from the consequences of his unfounded suspicions. The meeting was held at the Clarendon, and it was attended by Lord Combermere, Sir F. Burdett, Lord Marcus Hill, Mr. Parker the uncle of Mrs. Sombre, her brother, and several other persons. At that meeting they came to the following resolution:—"We the undersigned having given our patient attention to the various statements this day brought before us by Mr. Sombre, as tending in his mind to criminate his wife, have come to the unanimous decision that the statements have no foundation in any fact whatever, but seem to have originated in mere phantasms, arising no doubt from ignorance of the manners and habits of European society; and we feel it due to the conduct and character of his wife solemnly to declare that the investigation, to which we have attended with the utmost impartiality, has fully convinced us of her entire innocence and purity: we further feel ourselves entitled to expect that this result of our deliberation shall have the effect of dissipating such illusions for the future, and that the conduct of Mr. Sombre towards his wife shall be such as shall be in unison with that ardent affection admitted by himself to be entertained by him towards her, and with the regard and respect justly due to an innocent and devoted wife." Dr. Drever attended that meeting also, but at first refused to sign the resolution in consequence of the insertion of the words "phantasms, arising from ignorance of the manners and customs of Europeans," because he felt that no such ignorance existed, and believed the cause to be of a very different nature. He was, however, finally induced to sign it, on the suggestion that he might contribute to the restoration of Mr. Sombre's tranquillity of mind. Sir F. Burdett objected for the same reason, and did not give his signature to the document. Mr. Sombre at the conclusion of the proceedings declared, he would be bound by the decision, but that he was not nor never would be satisfied.

About that time, General Ventura, an old and esteemed friend of Mr. Sombre's, and a man well known in Oriental affairs, arrived in England. So anxious was Mr. Sombre to see his friend, that he left his wife in Dover, and came to London expressly for that purpose. He returned to Dover, brought Mrs. Sombre to the Clarendon, where General Ventura was staying with his daughter, and in a day or two went by the railroad to Stafford, with his wife, and then returned to London to enjoy the society of his friend. Nothing interrupted the harmony of the meeting. When the General left London, Mrs. Sombre returned, and Mr. Sombre and she set out for Scotland. All went well till they reached Edinburgh, but on their leaving that place for Inverary, he read in the newspaper of the marriage of Mr. Montgomery.

When a cannon was fired, for the purpose of raising an echo, he insisted that it was in honour of that marriage; and he persisted, in spite of all remonstrance, in asserting that Mr. Montgomery had been present at the breakfast table. From this time the violence and the delusions increased. At Inverness he charged Mrs. Sombre with having intrigued with General Ventura at her father's, after he left her at Stafford, and asserted that the General went down for that purpose in the same train, although he had left him at the Clarendon. So possessed was he with the notion, that he actually penned a challenge to the General, and despatched it to Messrs. Frere and Foster, his solicitors, with directions to send an express after the general, and follow him to Marseilles, to Malta, to Alexandria, and even to Bombay. At Inverness he met a Mr. Fraser, whom he had known in India; with him also he declared his wife to have been criminal; and to test whether that criminality occurred before or after marriage, he wrote a letter to Mr. Fraser to call on them on the following Sunday, declaring that the coming before or after church time, would determine the before or after marriage time of the criminal connexion. After various other acts of the same description, Mr. and Mrs. Sombre returned to London, where his violence increased. He wrote a letter to Prince Albert; he challenged Mr. Montgomery; he asserted that a regiment in Dublin had given a dinner in his honour; and that the Queen was so much gratified, that she kept a chair constantly vacant for him at the royal table. He knocked Mrs. Sombre out of bed, held her for a long time in one position, to protect him from the spirits which he believed were haunting him, and called her the most opprobrious names, at one time loading her with caresses, and at another treating her with cruelty. He believed that the spirits were two, a good and an evil one; and that one prompted him to kill his wife, and the other refused to consent to the act. He said that the spirit desired him to shave off his eyebrows, and when Mrs. Sombre suggested that it might do to cut off a part, he actually did so. He challenged Sir Hume Campbell for looking into his hat; declared that a lady of rank had taken him to another lady of rank for criminal purposes; and that the two highest personages in the kingdom had come to him at the Clarendon with a view to adulterous intercourse.

These were the facts, and if true, could any man doubt what was the state of mind of the person who was capable of such expressions and conduct? And what interest could his wife have in misrepresenting him? No one could deny that she was very fond of him; and if he was not insane, what motive could she have for such representations of his conduct? But these statements did not depend on her representations, they were confirmed by her maid, Sarah Lake, by Miss Parker, by Dr. Drever, and by several other persons, whose evidence, slight separately, became weighty by combination. If, therefore, any one could

suppose Mrs. Sombre, even for "a moment, guilty of such profligacy as to make an affidavit for the purpose of having her husband confined as a lunatic, such supposition would be at once refuted by the number of witnesses by whom her statements were corroborated.

[The remainder of the judgment will be given in our next number.]

*In the matter of Dyce Sombre.* May, June, July, and August, 1844.

#### Vice-Chancellor Algiam.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

**INJUNCTION.—VENDOR AND PURCHASER.—  
SALE OF SHIP.—PRACTICE.—LIEN.—RE-  
CEIVER.**

*Upon motion for an injunction by an alleged purchaser, to restrain the registered owners of a ship from interfering with her, her cargo, or freight, a court of equity has power to take possession thereof, until the validity of the sale has been decided at law.*

*Semble, that a party who claims as purchaser of a vessel to which he is found to have no title, cannot claim a lien upon her for money expended in her repair.*

*Quære, whether equity can assist a party in removing one name from, and putting another upon, the register?*

*Practice of the court in directing issues, or leaving parties to their legal remedy, and in imposing terms upon them.*

(Concluded from p. 13, ante.)

*August 3.*—His Honour now disposed of the case. At the close of the argument in this case, I was of opinion, 1st, that the plaintiffs' right should be tried at law; and 2ndly, that the court had power to secure the ship in the mean time, so as to be able, at the hearing of the cause, to award it to its lawful owner. I had no doubt of my right so to deal with the ship as against the plaintiffs; but as they would obtain possession of the ship the moment they established their right to her, and as I cannot impute to them any intention of obtaining that possession by violent or unlawful means, I cannot injure them by that part of my order. The question was, how the right to the ownership of the ship was to be tried? The plaintiffs' counsel proposed, at the close of the argument, that the defendants should bring an action of trover; and that was assented to, because it gives the plaintiffs in equity an opportunity of raising the question of lien, and the right of possession independently of legal ownership. Since the argument, the plaintiffs have applied to me, 1st, that issues should be directed instead of an action being brought; or, 2ndly, that if an action were brought, terms should be imposed upon the defendants in equity; or, 3rdly, that the plaintiffs in equity should be the plaintiffs at law. With regard to the last point, no ground has been stated for such an arrangement, except that which was suggested by the defendants, namely, the advantage of the reply at law. I am clear that that is not an advantage which I can allow to alter the arrangement deliberately made. I think, therefore,

that part of the arrangement must stand. As to the first part of the application, namely, for issues, instead of an action, I have no doubt about the power of the court, when, for its own information, it finds it necessary to direct issues, so to deal with the case; but there is a difficulty in directing an issue before the hearing, unless in the very simple case pointed out in *Fullagar v. Clark*, 18 Ves. 481. The general course is to say, if you have a legal right, establish it at law, and then come back to this court, if necessary, for its assistance. The remaining question, namely, whether I could impose any terms upon the defendants, is the real difficulty in the case. If it is admitted that there are to be admissions of the possession and the conversion, the only terms I could impose would be, that the defendants should not set up the point suggested as to the register. Upon the point, as to the materiality of the register, I had a very strong opinion, induced partly by the case of *Hunter v. Parker*; partly by the forcible reasoning of the plaintiffs' counsel during the discussion at the bar; and partly by what appears to be the logical necessity of the rule, that the master may, in cases of necessity, sell the ship. If I impose no terms, and the plaintiffs obtain a verdict, that verdict will cover every question in the cause. If I do impose the terms required, it may possibly remain a question at the hearing of the cause, whether the defendants are not entitled to the opinion of a court of law upon the question as to the register. If, on the other hand, I do not impose the term required, and the defendants in equity should obtain a verdict, and the verdict in their favour should appear to have depended in any degree upon the state of the register, I have no hesitation in saying, that such a verdict would, in my judgment, be a mere nullity for the purpose of trying that question for which the action was directed to be brought, and would not alter the position of the case, until the title of the ship had been tried on its proper ground. Several courses are open to me. I may allow the case to stand as it does, trusting to my own opinion of the law of the case, and also trusting to the defendants' discretion that they will not raise a point, which they must know will make a verdict in their favour, if they get one,—useless in this court. It is a very common rule of the court, when it directs an issue, or allows an action to be brought, for the purpose of trying a question, to say, that if the party chooses to prevent the trial of that question, by taking any technical point so as to prevent a fair trial, the court will put the question in a train for trial *toties quoties*; or, 2ndly, I may give a direction as to the action that it shall stand over until such a day, the plaintiffs to be at liberty to get the names of the defendants off the register as they may; or, 3rdly, I may direct that the defendants shall not at the trial set up that point, about the register. The first and second courses will, or may, decide the whole question at law; the third may leave some point of law open at the hearing. I confess, after giving the case the best consideration I

can, and relying in some degree upon the opinion which I have formed, which I do not think Mr. Crampton<sup>a</sup> seemed to think an ill-founded one, namely, that the question about the register cannot arise, I cannot say that I see enough in this stage of the cause to induce me to impose any terms on the defendants which would not be imposed upon them, if the action had been brought before coming to this court. I must let the case stand as it does, with this intimation, that if, when the case comes back, the defendants have obtained a verdict upon any merely technical point so as to leave the real question undecided, I shall do all in my power to obtain a decision before I part with the possession of the ship. As to any one being appointed manager or receiver, it is useless to go through that form, although I will do it, if the parties desire it. Instead of doing so, the better course seems to be to give each party liberty to apply to the master to obtain the possession or the use of the ship, such party giving security to deal with her as the court may direct.

*Ridgway v. Roberts*, July 18, 25, 26, and Aug. 3, 1844. Lincoln's Inn.<sup>b</sup>

### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### CERTIORARI.—AMENDMENT.—COSTS.

*Where a rule for a certiorari to bring up certain orders made by the Town Council of Dover was obtained in Trinity Term; and the order was served on the parties on the 19th of October, and notice of an application to amend the rule was given on the 29th of October: Held, that the Court, in the exercise of its discretion, would not permit the parties to amend their rule; and that if the certiorari was defective, the proper*

*course was to move to have the rule for the certiorari discharged.*

ON the 10th of June last, Mr. M. D. Hill obtained a certiorari to bring up certain orders made by the Town Council of the Corporation of Dover, extending from the year 1839 up to the present time. The rule was served on the parties on the 19th of October. On the 29th of October the parties applying for the certiorari gave notice to the defendants, that on the first day of Michaelmas Term, or as soon afterwards as counsel could be heard, application would be made to amend the rule, so as to enable them to bring up other orders that would not be included in the rule in its present form.

Mr. Kelly and Mr. Crompton showed cause.

A certiorari has been obtained to bring up a great number of orders made by the Town Council of the Corporation of Dover, and an application is now made to the court to amend that rule, so as to enable the parties to bring up other orders that are not included in the rule which has been granted. The application should have been made to discharge the rule, not to amend it. The Town Council have incurred certain expenses in preparing affidavits, and taking the necessary steps in support of the orders, which costs they are entitled to have repaid. The court, therefore, will either quash the present rule, and allow the parties to make a fresh application to the court to bring up these orders; or they will grant the application to amend, on terms of payment of all costs incurred up to the present time.

Mr. M. D. Hill contra.

This rule was drawn up by the officer of the court, but it was afterwards discovered that a mistake had occurred, and that the rule, in the way in which it was drawn up, was not calculated to include all the orders that were objected to. The amendment now required is substantially the same as what was originally asked for. The rule is not discharged or abandoned, and the costs must depend on the issue of the rule when the validity of the orders come to be discussed, they cannot be granted by the court in the present stage of the proceedings. The Town Council are not prejudiced by this motion, nor have they incurred any additional costs, because notice was given them in due time that this application would be made to amend the original rule.

Lord Denman, C.J.—I should be sorry to say that the court is prevented from granting amendments in all cases; but under the circumstances of the present case the court does not see any reason to interfere. The only proper mode of proceeding would be to apply to have the rule discharged, and we cannot have the time of the court taken up in attending to applications like the present. This rule, therefore, for the amendment will be discharged with costs.

*Williams, Coleridge, and Wightman, J.'s*, concurred.

Rule discharged with costs.

*The Queen v. The Corporation of Dover*. Michaelmas Term, 1844.

<sup>a</sup> Mr. Crampton was heard upon the legal question, as to question the register and the form of the action.

<sup>b</sup> The form of the minute, understood to have been drawn up by consent, was to the following effect:—"Motion to stand over; the plaintiffs to bring an action to try their legal right to the ship; both parties undertaking not to do any act interfering with the ship, except under the direction of the court; with liberty for the plaintiffs and defendants to lay proposals before the master for obtaining the use and possession of the ship, upon giving satisfactory security for restoring her free from incumbrances, and undertaking also to deal with the possession thereof as the court may hereafter direct; the title-deeds and papers connected with the ship to be given with her, so far as may be necessary for such use and possession."

## Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

PLEADING.—ISSUABLE PLEA.—FOREIGN LAW.—PRESCRIPTION.—CONTRACT.—REMEDY.—PRACTICE.

*A plea that the debt sued for had been contracted in France, and that by the French law of prescription the action ought to have been brought within five years after the accruing of the cause of action, and that more than that period had elapsed,—is not an issuable plea.*

A rule had been obtained calling on the plaintiff to show cause why the interlocutory judgment signed in this cause should not be set aside for irregularity. The action was in assumpsit for goods sold and delivered. The pleas were,—1, non assumpsit; 3, a delivery of the bill of a third party in accord and satisfaction; 4, as to a part of the demand, a set off; 5, payment by the bill of the defendant; 6, payment before action in cash. It was pleaded, 2ndly, to a part of the demand, that the promises in the declaration mentioned in respect thereof were, and each of them was, made by the defendant, and the causes and rights of action, and each and every of them, as to that sum, accrued to the plaintiff in parts beyond the seas, to wit at Paris, in the kingdom of France, they the defendant and plaintiff then respectively living and residing therein, and whilst they were to wit at Paris aforesaid, in the said kingdom, respectively carrying on the business of merchants, to wit as jewellers; in which said kingdom, at the time of making the said several promises as to the said sum in the introductory part of this plea mentioned, and the causes and rights of action in respect thereof accrued to the plaintiff, the law was, and from thence hitherto hath been, and still is, this, to wit, than an action relating to matters of commerce must be brought within five years after the cause or causes of action accrue; and defendant further saith, that the said several alleged rights and causes of action in the declaration mentioned, as to the said sum in the introductory part of the plea mentioned, and each and every of them, did arise and accrue to the plaintiff in a matter of commerce between the plaintiff and defendant, as merchants, that is to say, in and about and in respect to the sale of divers pearls and precious stones; and defendant further saith, that the said rights and causes of action in respect of that sum did not, nor did any or either of them, arise and accrue to the plaintiff at any time within five years next before the commencement of this suit. Verification.—The plaintiff having signed judgment for want of a plea, the present rule was obtained.

*Erie* showed cause.—This is not an issuable plea, and the judgment was properly signed. *Huber v. Steiner*.<sup>a</sup> [*Wightman, J.*—The sub-

stance of that decision is, that the French law of limitation as regards promissory notes appertains *ad tempus et modum actionis instituende*, and not *ad valorem contractus*. As to the remedy, the debtor is subject to the laws of the country in which he is domiciled when the creditor sues.]

*Erie*.—The law of prescription only affects the remedy, and not the merits of the contract.

*Peacock*, on the same side, was stopped.

*Atkinson, contra*.—This plea is issuable. The principles of international law, as stated in *Huber v. Steiner*, are not disputed, but the contest here is as to the effect of that decision. No doubt the *lex fori* prevails as to the remedy, and the *lex loci* as to the contract. That is admitted. In that case, however, the French law of prescription was pleaded for the first time, and had the question arisen on demurrer, it would no doubt have been an authority for the doctrine here contended for, but issue was joined on a question of fact, and the question was, whether or not the plea was supported by evidence. The *Code de Commerce* was relied on to show that the law in question only suspended the remedy, but did not extinguish the debt. But the present plaintiff contends, and proposes to prove, that it does extinguish the debt. That question was not considered in the case cited. Nothing more was decided in it than that the evidence did not support the plea. The question whether this law does or does not extinguish the debt has never yet been determined; and the court will not dispose of so important a question without argument, and allow it to be anticipated by affirming the precipitate course adopted here. [*Wightman, J.*—As this plea is pleaded, it goes to the remedy and not to the contract. Nothing is said in it about the extinction of the debt.] Then I revert to the position, that what is a defence in one country is a defence all over the world. *Story* himself does not express himself without doubt upon the subject. In the *Conflict of Laws*, p. 487, he lays it down that where the statute of limitations of a particular country not only extinguishes the right of action, but the claim or title itself *ipso facto*, and declares it a nullity after the lapse of the prescribed period, in such a case the statute may be set up in any other country to which the parties remove, with this qualification, that the parties are resident within the jurisdiction during all that period; so that it has actually operated upon the case. The rule as there laid down is, that where the debt is extinguished it is a good defence. If that, therefore, can be shown here, this plea discloses a defence. In *Huber v. Steiner*, *Tindal, C. J.*, laid particular stress on the fact of the non-residence of the parties in the country whilst the contract was running. In this country, if the statute begins to run and the debtor leaves the country, the remedy is extinguished. It is obvious, on various grounds, that as that case did not arise on demurrer, it cannot be treated as an authority to govern the present, and the

<sup>a</sup> 2 Bing. N. C. 202; 2 Scott, N. R. 304.

plaintiff was consequently wrong in treating this as a non-issuable plea.

*Wightman, J.*—It seems to me that the plaintiff has done right. The form of the plea shows that it relates to the remedy and not to the contract. Admitting it to be true, therefore, it only amounts to this, that an action on matters relating to commerce must be brought within five years, and that this is a matter relating to commerce. The case of *Huber v. Steiner* shows the distinction between the English and French law upon the subject, and the elaborate judgment of *Tindal, C. J.*, in that case, appears to me to be conclusive of the question. He says, "So much of the law as affects the rights and merits of the contract, all that relates *ad litem decisionem*, is adopted from the foreign country; so much of the law as affects the remedy only, all that relates *ad litem ordinationem*, is taken from the *lex fori* of that country where the action is brought; and that in the interpretation of the rule, the time of the limitation of the action falls within the latter division, and is governed by the law of the country where the action is brought, and not by the *lex loci contractus*, is evident from many authorities. In *Huber's* treatise, *De Conflictu Legum*, s. 7, he says, 'Ratio hæc est quod præscriptio' (where, observe, the term *præscriptio* is used generally for limitation) 'et executio non pertinent ad valorem contractus sed ad tempus et modum actionis instituendæ.' It is unnecessary to cite more. The authorities are collected in the case of *The British Linen Company v. Drummond*, 10 B. & C. 903, which case itself furnishes an authority for the position. The opinion of the learned author of the *Conflict of Laws*, Story, is also in accordance with the doctrine laid down by *Tindal, C. J.*, in the above case, not in terms, it is true, but substantially. It seems to me, therefore, that this plea is not an issuable plea, within the meaning of the rule requiring a party to plead issuably, and that the plaintiff was justified in the course he has pursued; but as there is an affidavit of merits, the rule to set the judgment aside may be made absolute on payment of costs, and the plea may then be struck out, and the cause set down for the sittings after term.

Rule accordingly.

*Bury v. Godwin. Q. B. P. C. T. T., 1844.*

### Exchequer.

#### TROVER.—BANKRUPT.

*Where the goods of a bankrupt are wrongfully taken in execution, the assignees are not entitled to sue the execution creditor for the difference between the real value of the goods and the produce of a bona fide sale: but where the goods of a private individual are wrongfully taken in execution, he is entitled to recover their full value.*

Trover by the assignees of a bankrupt. The defendant paid 20s. into court and pleaded no damages ultra, upon which issue was joined. At the trial before the Lord Chief Baron at the London sittings after last term, it appeared that the plaintiffs were the assignees of Shurry, a bankrupt, who had carried on the business of

printer. The fiat issued on the 21st of June 1841; and on the 28th of June, the defendant, who was a creditor of Shurry, put in an execution on his goods. The sheriff thereupon applied to a judge under the interpleader act, and an order was made by *Patteson, J.*, that the goods be sold, and the proceeds thereof paid into court, to abide the event of an action in which the present defendant was to be plaintiff and the assignees defendants. The goods were accordingly sold by auction, but fetched far less than their real value, the defendant abandoned his claim, and the money was paid out of court to the assignees. The present action was brought to recover the difference between the real value of the goods and the proceeds of the sale. The learned judge told the jury, that if they were of opinion that the sale was fair and *bonâ fide*, they ought to find for the defendant. The jury found a verdict for the plaintiff to move to enter a verdict for him.

*Humfrey* moved to enter a verdict for the plaintiff for such amount as should be determined by an arbitrator. The plaintiffs have sustained a loss in consequence of the tortuous act of the defendant, and are therefore entitled to recover in this form of action. (*Parke, B.* The sale having taken place under the judges' order, can you complain of it as a tortuous act?) The sheriff applied for relief, and the plaintiffs were obliged for their own security to consent to the order for the sale of the goods.

*Pollock, C. B.* There would be no impropriety in representing the effect of a sale by auction. The question is, would the assignees have been obliged to sell the goods? they undoubtedly would, for they could not carry on the business without the consent of the creditors. In all my experience I never knew a case in which the plaintiffs had recovered, under circumstances like the present: it is different where there has been a want of discretion with respect to the sale, which has caused a ruinous loss. *Glaspool v. Young*, 9 B. & C. 697, and *Clarke v. Nicholson*, are authorities in support of this application.

*Parke, B.* The question was correctly put to the jury. There is a distinction between the case of a person whose goods are wrongfully seized under an execution, and that of the assignees of a bankrupt who are bound to sell. The measure of damages is the value of the goods at the time of the conversion. Then, in consideration that the assignees are obliged to sell, the value is only what the goods would fetch at a fair and *bonâ fide* sale. The jury were told to consider whether the sale was fair and *bonâ fide*, and they found it was. If the goods were disposed of in a way in which the assignees would have sold them, there can be no ground for this motion.

*Gurney, B.* The direction of the Chief Baron was correct, as no question was made as to the mode of sale.

*Rolfe, B.* The test is, what would have been the value of the goods at the time of the wrongful conversion, supposing they had then been sold? That would not be a satisfactory test

in the case of a private individual, but it is in the case of the assignees of a bankrupt.

*Pollock, C. B.* This discussion has arisen from the uncertainty of the meaning of the word *value*. To a person who wishes to have the use of goods, their value must be more than to a person who wishes to dispose of them. The assignees of a bankrupt are persons who must part with the property, consequently its value is that which it will produce, if fairly sold. No doubt, strictly speaking, the right of every person whose property is taken stands on the same footing; but this is a question of damage, and must depend upon the extent of injury; which would be different in the case of assignees and private individuals; *Glasspool v. Young* was one of the latter description: the party whose goods had been taken in execution was under no obligation to sell them, and she lost not only the value produced by the sale, but also the value of their existence in use. There is this additional fact, that the assignees permitted the order for the sale to be made without calling the judge's attention to the circumstances that it might be attended with loss, though I do not decide on that ground. The courts have adopted this maxim, that where there is a reasonable and proper sale, it is a fair criterion of the value of the goods to the assignees.

*Whitmore and another, assignees of Shurry, a bankrupt v. Black.* Exchequer, Michaelmas Term, Nov. 5, 1844.

#### NOTES OF THE WEEK.

**LAW OF ARREST.—EXECUTION AGAINST PROPERTY.**—We learn, on good authority, that an alteration in the recent Law of Arrest in Execution will be made early next session, and that the remedy against the property of debtors will be extended to *salaries*.

#### ATTORNEYS' AND SOLICITORS' ADMISSIONS.

WE are informed that upwards of 200 solicitors were sworn in the first day of term, before the Master of the Rolls. Such admissions under the 45th section of 6 & 7 Vict. c. 73, will relate back to the time of admission in the first common law court in which they were respectively admitted, and any intervening costs may therefore be recovered. Those who may be hereafter admitted will, of course, not have that retrospective advantage.

We understand the Master of the Rolls will continue to admit solicitors *without examination*, on producing their previous common law admissions, on such days as may be appointed.

A large number of attorneys attended in the Common Pleas and Exchequer Offices, on or just before the 2nd Nov., to sign the rolls, and though this was the safest course where they could conveniently attend, we still think it was not strictly necessary to do so, and that being admitted in the Queen's Bench, they could practise through their agents in the Common Pleas and Exchequer. The 8th section of the 25 Geo. 3, c. 80, which act is expressly saved by the 6 & 7 Vict. c. 73, gives this right to

practise in the name of another attorney. The inconvenience has arisen from considering that the 2 Geo. 3, c. 23, which is repealed, was the only statute authorizing such practice. The crowds who came on the very last day of the fourteen months allowed by the act, exemplify the general disposition to procrastinate, and especially show that lawyers always attend to their clients' affairs in preference to their own.

#### BANKRUPTCY.—DIVIDENDS DECLARED.

From October 1st to the 25th, 1844, both inclusive.

- Antrobus, D., Great Budworth, Chester, Salt Merchant. Div. 6jd.  
 Atcherley, P. R. Div. 1jd.  
 Baker, B., Liverpool, Marble Mason. Div. 3s. 6d.  
 Bennett, J., Manchester, Calico Printer. Div. 6jd.  
 Biggs, C., Manchester, Merchant. Final div. 3s. 6d.  
 Blachford, P., Plymouth, Miller. Div.  $\frac{1}{4}$ ths of a penny.  
 Buckley, J., Joseph Buckley, and H. Buckley, Manchester, Manufacturers. Div. 1s.  
 Bull and Turner, Birmingham, Printers, &c. Div. 1s.  
 Bullman, E. K., Leeds, Cabinet Maker, &c. Div. 4s. 4d.  
 Clarke, T. F., Scotland Road, Liverpool, Draper. Div. 4s. 10jd.  
 Cleverley, G., Calne, Wilts, Builder. Div. 7s. 6d.  
 Cooper, J., Stoney Lane, Southwark, Wheelwright. Div. 3s. 6d.  
 Davies, R., Abercarn, Monmouth, Grocer. Div. 1s. 6d.  
 Dean, J., Habergam Eaves, Lancaster, Cotton Spinner and Manufacturer. Final div. 3s. 1d.  
 Dixon, J., Wellington, Salop, Mercer, &c. Final div. 1s. 1jd.  
 Dowle, J., Cheapstow, Monmouth, Wine Merchant. Div. 6d.  
 Evans, T., Denbigh, Scrivener, &c. Div. 3s. 1d.  
 Fairclough, G. F., Liverpool, Monkey Scrivener and Banker. Div. 2s. 3d.  
 Fairclough, G. F., and Wiatt, Liverpool, Scriveners and Bankers. Div. 3s. 10d.  
 Fletcher, W., Birmingham, Oil and Colourman. Div. 4s. 6d.  
 Fletcher, T., Loscoe, Derby, Grocer. Div. 3s. 9d.  
 Fozzard, E., Saddleworth, York, Dyer. Div. 7jd.  
 Frost, J., Bristol, Baker. Final div. 3d.  
 Garsed, J., Elland, Halifax, York, Cloth Dresser. Final div. 1s. 11d.  
 Gibson, E., Kendal, Builder, and of Dolwyddelan, Carnarvon, Slate Merchant. Div. 5s. 6d.  
 Glover, E., Junr., Leicester, Ironmonger and Silversmith. Div. 1s.  
 Gordon, A. W. Cartwright, and J. Blackett, Manchester, Machine Makers. Div. 1s. 3d.  
 Grimshaw, J., Rawcliffe, Snaith, York, Draper and Grocer. Final div. 3s. 8jd.  
 Hawarden, J. R., Myerscough, and J. Jackson, Little Bolton and Manchester. Final div. 2s. 2jd.  
 Hawkins, G., Bristol, Mason. Div. 2s. 6d.  
 Hayward, E., Castle Hedingham, Essex, Innkeeper. Div. 9d.  
 Hebblewhite, T., Liverpool, Wine Merchant. Div. 6jd.  
 Hebblewhite, T., Liverpool, Wine and Spirit Merchant. Div. 9d.  
 Higginson, T., Liverpool, Pawnbroker, &c. Div. 2s. 6d.

Hill, J., Seacombe, Wallasey, Chester, Brewer. Div. 3d.  
Hodgson, R., Bishop Auckland, Durham, Mercer. Div. 9s.  
Howarth, J., Rochdale, Flannel Manufacturer. Div. 3½d.  
Jackson, C. S., Leeds, Cloth Merchant. Final div. 2s. 6d.  
Jefferson, R., Newcastle-upon-Tyne, Victualler. Final div. 1s. 2d.  
Jdan and Magrath, Liverpool, Merchants. Div. 4d., (on separate estate of R. J. Magrath, div. 17s. 6d.)  
Lamb, J. R., Unsworth Lodge, Pilkington, Lancaster, Calico Printer. Final div. 1s. 6½d.  
Longmead, W., Teignmouth, Devon, Banker. Final div. 2½d.  
Lines, S. L., Oldbury, Halsowen, Salop, Grocer. Final div. 1s. 9d.  
May, J., Pickwick, Coraham, Wilts, Victualler. Div. 3s. 1d.  
Meredith, S., Liverpool, Linen Draper. Div. 3s. 2½d.  
Molineux, T., Manchester, Silk Manufacturer. Div. 1s.  
Nash, W. H., and W. Gardiner, Exeter, Drapers. Div. 7s. 4d. (on separate estate of W. H., Nash, div. 1s. 8d.)  
Newsome, J., Dewsbury, York, Blanket Manufacturer. Final div. 9½d.  
Nuttall, T., Rochdale, Lancaster, Pork Butcher. Div. 2½d.  
Parker, T. and J., Woodhouse Carr, Leeds, Dyers. Final div. 7½d.  
Parsonage, J., Birmingham, Paper Hanger. Div. 3s. 4d.  
Paxtor, R. B., Newcastle-upon-Tyne, Fruiterer. Final div. ½d.  
Potts, W. M., Newcastle-upon-Tyne, Grocer, &c. Final div. 3½d.  
Pritchard, E., Liverpool, Wine and Spirit Merchant. Div. 4s.  
Scott, C., Newcastle-under-Lyme, Stafford, Currier. Final div. 1s. 9d.  
Simpson, R., Blue Bell Inn, Embleton, Cumberland, Innkeeper. Div. 10s.  
Smith, B., Div. 8½d.  
Southern, J., New Street, Birmingham, Grocer. Div. 8s. 6d.  
Strawbridge, G., Bristol, Mason. Div. 3s.  
Taylor, G., Moreton-in-the-Marsh, Gloucester, Mercer, &c. Div. 6d.  
Thompson, T. H., Liverpool, Merchant. Div. 2½d.  
Timmis, W., Longton, Stafford, Draper. Div. 1s.  
Weir, W., Carlisle, Iron Merchant. Div. 5s. 6d.  
Whitley, J., Liverpool, Money Scriveners. Div. 1½d.  
Wilkinson, G. and J., Bishop Auckland, Durham, Carriers. Div. 1s. 9d.  
Wilson, J., Bolton, Lancaster, Timber Merchant. Final div. 1s. 4½d.  
Wood, J., Heatfields-within, Saddleworth, York, Woollen Manufacturer. Div. 1s. 2½d.  
Wright, J., Horsforth Woodside, Guiseley, York, Corn Miller. Final div. 1s. 11½d.

Ann. for 30 years, expire 10th Oct. 1839. 12½ a 7  
Ditto 5th Jan. 1860 . . . 12½  
Ditto 5th Jan. 1880 . . . 21½  
India Stock, 10½ per Cent. . . 287s. a 6s. a 7s.  
Ditto Bonds, 3½ per Cent., 1000l. . . 91s. pm.  
Ditto under 1000l. . . 92s. pm.  
South Sea Stock div. 3½ per Cent. . . 114½  
3 per Cent. Cons. for Acct., 28 Nov. 100 a 99½ a 100  
Exchequer Bills, 1000l. 1½d. . 73s. a 70s. a 2s. pm.  
Do. 500l. . 71s. a 6s. a 70s. pm.  
Do. small „ 71s. a 3s. a 70s. pm.

## CHANCERY CAUSE LISTS.

Lord Chancellor.

Michaelmas Term. 1844.

## APPEALS.

S. O.	Clun Hospital	El. Powis	appeal and
	Attorney-Gen.	do.	petn.
S. O.	Marq. of West-		
	minster	Morrison	appeal
S. O.	The Sheffield	The Sheffield & Rotherham	
	Canal Co.	Railway Co.	appeal
	Tullock	Hartley	appeal pt. hd.
S. O.	Strickland	Strickland	
	Do.	Boynston	do.
	Do.	Strickland	
	Brown	Bees	do.
	Bruin	Knott	do.
	Matthew	Brise	do.
	Dk. of Leeds	Earl Amburst	do.
	Spalding	Ruding	do.
	Millar	Craig	do.
	Cochrane	Cochrane	
	Lord	Colvin	do.
	Davenport	Bishop	do.
	Clifford	Turrell	do.
	Parsons	Bignold	do.
	Forbes	Peacock	do.
	Forman	Nevill	do. and motion
	Mqs. of Hertford	Ld. Lowther	appeal
	Tyler	Hinton	do.
	Miln	Walton	do.
	Sandon	Hooper	do.
	Vandeleur	Blagrove	do.
	Mqs. of Hertford	Ld. Lowther	
	Livesey	Livesey	10 causes do
	Crosley	Derby Gas Co.	do.
	Parker	Bult	do.
	Mqs. Hertford	Ld. Lowther	do.
	Ladbroke	Smith	do.
	Hitch	Leworthy	do.
	Coore	Lowndes	do.
	Minor	Minor	
	Do.	Do.	do.
	Drake	Drake	do.
	Dalton	Hayter	do.
	Baggett	Meux	do.
	Payne	Banner	do.
	Dobson	Lyall	do.
	Moorat	Richardson	do.
	Millbank	Collier	do. want of parties
	Deeks	Stanhope	appeal
	Wiltshire	Rabbitt	do.
	Smith	El. of Effingham	do.
	Archer	Hudson	do.
	Deeks	Stanhope	do.

## PRICES OF STOCKS.

Tuesday, Oct. 29th, 1844.

Bank Stock div. 7 per Cent. . . . . 203  
3 per Cent. Reduced Annuities . . . . . 99 a 1  
3 per Cent. Consols Annuities . . . . . 99½ a 1  
New 3½ per Cent. Annuities . . . . . 101½ a 1  
Long Annuities, expire 5th Jan. 1860 . . . . . 12 a 1

Master of the Rolls.

PLEAS AND DEMURRERS.

Attorney-General v. Mayor and Commonalty and

Citizens of the City of London, demurrer of defendant, J. H. M. Merewether.

Gibson v. Chaytor, demurrers of defts. to plts. amended bill.

Cruickshank v. McVicar, demurrer of deft. D. L. Burn.

Barker v. Walters, demurrer of deft. Croft.

Same v. Same, demurrer of deft. Walters.

Taylor v. Wyld, demurrer of deft. N. Lindo.

CAUSES.

Stand over, James v. James, cross cause.

Stand over, come on with suppl. cause, Johnson v. Todd, Same v. Same, Same v. Same, fur. dirs. causes and petition.

Last cause day in term, Walton v. Potter

Attorney-General v. Potter, fur. dirs. and causes.

After appeal, Langley v. Fisher.

Wedgwood v. Adams, fur. dirs. and causes.

Stand over till mentioned to come on with suppl. cause, Richardson v. Horton, Same v. Taylor, Same v. Derby, fur. dirs. and causes, Conolly v. Fawell, part heard.

First cause day after term, Attorney-General v. Badingfield.

Stand over to arrange, Mellersh v. Marshall.

Marshall v. Mellersh, H. Mellersh v. Marshall.

To come on with original cause for fur. dirs., Hornby v. Houghton.

Snook v. Watts.

Stand over to file suppl. bill, Hele v. Bexley, Same

v. Same, exons. of deft. Donovan.

Chidwick v. Prebble.

Stand over for suppl. bill, Gibson v. Nicol, Gibson v. Alsager.

Westfield v. Skipworth

Fulton v. Gilmore

Bloomfield v. Eyre

Ward v. Audland, fur. dirs. and causes

Bradley v. Groom

Robertson v. Morrice

Shallross v. Hiberson, Same v. Dickson, Same

v. Slagg, Same v. Gawthorn, Same v. Same, Same v. Chester, fur. dirs., causes, and petn.

Ottley v. Gilby, fur. dirs. and causes

Curtis v. Robinson

Powell v. Wright, as against the defts., Powell v.

Dexter Wellesleys, Same v. Lawson, Same v. Smith

Mayor &c. of Ludlow v. Charlton

Attorney-General v. Ironmongers Co., exons. of defts. and fur. dirs. and causes

Score v. Ford

Bordieu v. Bromley, Same v. Same, Schofield v. Same, fur. dirs. and causes

Knightly v. Frimby, Same v. Same

Waring v. Lee, Same v. Same, Same v. Same, fur. dirs. and causes

Stand over to present petition, Attorney-General v. Lewis, Same v. Same, fur. dirs. and causes.

Earl of Dundonald v. Norris

Marquis of Hertford v. Lord Lowther, exons. of plaintiff

Beauchamp v. Ashbromham

Wiggins v. Wiggins, Wiggins v. Linthorne

Attorney-General v. Troughton

Barlow v. Gains

Attorney-General v. Long, Same v. Cobbe, Same

v. Troughton

Wynn v. Heavingham, Wynn v. Lovat

Fernbough v. Guiders, Same v. Same, Same v. Same, fur. dirs. and causes

Rogers v. Vasey, fur. dirs. and causes

Radburn v. Jervis, Same v. Brundrett, Here v. Hill, Same v. Radburn, fur. dirs. and causes

Fraser v. Wood, exons. of plaintiff

Hammett v. Ledeam, fur. dirs. and causes

Collins v. Reece, fur. dirs. and causes

Flower v. Hartopp, Same v. Same, fur. dirs. and causes

Montresor v. Montresor, fur. dirs. and causes

Davenport v. Charlesworth, Charlesworth v.

Manners, rehearing

Watson v. Parker.

Johnston v. Rowlands

Lewis v. Lewis

Barton v. Chambers, Same v. Bicknell, Same v. Chambers, fur. dirs. and causes

Boschetti v. Power, exon. of deft. Power

Kirkland v. Kirkland, fur. dirs. and causes

Wintle v. Barton, fur. dirs. and causes

Tarquer v. East India Company, Morgan v. Same, exons.

Dick v. Lacy

Hotham v. Somerville, S. N. 20th Nov.

To come on with Conolly Farrell, Conolly v. Butcher, S. N. 20th Nov.

Vince v. Overton, fur. dirs. and causes.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Sharp	Le Pipre	demurrer
Gaucias	Recardo	plea
The Peninsular & Oriental Steam Navigation Co.	Claxton	demurrer
Huxtable	The State of Illinois	2 dmrs.
Forman	Brooks	plea
Coulstring	Coulstring	plea
Fanshaw	Walter	demurrer
Manton	Rowe	2 demurrers
Tremlett	Lamb	demurrer
To fix a day { Richards	Wood	cause
{ Richards	Wood	exons. & fur. dirs.
Bezoldgette	Kirlew	fur. dirs. & costs.
Frankum	Bunny	
Palmer	Patterson	
Branscomb	Branscomb	
Montague	Cator	fur. dirs. and
Do.	Tebbs	costs
Do.	Kenworthy	cause
Wilson	Jones	
Milnes	Fry orwise.	Curtis
Rainbow	Lamb	
Templeman	Brelsforth	
Freeman	Roberts	4 causes
Carter	Jeffery	fur. dirs. & costs
Carmichael	Hughes	do.
Shackel	Marlborough	cause & rebg
Matthews	Gabb	fur. dirs. and
Do.	Gwyer	3 petns.
Do.	Sturgis	
Avarne	Browne	exons. & petns.
Boydell	Golightly	fur. dirs.
Do.	Stanton	
Do.	Moreland	cause
Breeze	Hawker	
Do.	English	
Bonner	Hatch	fur. dirs. & costs
Carrington	Joyce	do.
Burfoot	Moore	
Do.	Archdeacon	
Minter	Wraith	
Trulock	Robey	exons. 2 sets
Calley	Brooking	
Cooper	Richardson	3 exs. fur. dirs.
Warwick	Do.	4 causes do.
Do.	Do.	exons. and petn.



	Palmer	Horton
	Lipscombe	Parkes
	De Medina	Ginger
	Lechmere	Oakley fur. dirs. & costs
	Baxter	Atkinson do.
	Craddock	Piper 4 caus. exons. 2 sets
	Johnson	Johnson 3 causes fur. dirs.
	Shute	Shute fur. dirs. and petn.
	Rogers	Roger fur. dirs. and costs
	Greenwood	Taylor } exons. 2 sets.
	Cox	Pearce }
	Preston	Melville fur. dirs. & costs
	Dowley	Winfield fur. dirs.
	Watson	England exons. & fur. dirs.
	Bruce	Macpherson fur. dirs. & cos.
	Williams	Pridesaux do.
Short	Orred	Whitley do.
	Marsh	Pike do.
	Pearse	Brooke do.
	Knight	Wilnot exons. 2 sets
<i>New Causes.</i>		
Short	Ryle	Sharp
	Player	Watson
	Williams	Do.
Short	Dunholm	Vent
	Anson	Ingram

**Vice-Chancellor Knight Bruce.****CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.**

S. O.	Rocke	Cooke demurrer
	Tiley	do.
	Gibson	Steward 2 demurrers
	Dodsworth	Kinniard at reqst. of deft.
	Do.	Do.
	Nedby	Nedby
	Dover	Do.
Nov. 4th	Clayton	Lord Nugent } fur. dirs. and costs
23th	Thwaites	Foreman
	Bristow	Wood exons.
	Do.	Do. fur. dirs. and costs
	Cuming	Thrower
	Do.	Do.
	Lyon	Colvill } fur. dirs. and
	Do.	Freshfield } petn.
	Doyle	Cartwright } fur. dirs. and
	Do.	Cary } costs
	Craik	Lamb do.
S. O.	Barber	Leggatt } exons. and fur. dirs. pt. hd.
	Dean	Hall } 4 causes fur. dirs. and costs
	Chillingworth	Chillingworth } fur. dirs.
	Taylor	Elliott } and costs
<i>New Causes.</i>		
	Lodge	Gray
	Wood	Cooper

*Causes transferred from V. C. of England's List, by the Lord Chancellor's Order.*

Boazman	Casenove at reqst. of deft.
Mason	Birkitt
Hunt	Roberts 4 causes exons.
Lewis	Lipscombe
Forbes	Lawrence
Wood	Anderson
Holland	Lipscombe
Branson	Bickley
Williams	Wood
Smith	Meyrick }
Howes	Do. }
Murrells	Viall
Childs	Fountain
Artia	Artis at request of deft.

{ Thompson	Sewall
{ Do.	Thompson
{ Pemberton	Jackson
{ Davis	Morrier
{ Adams	Paynter }
{ Do.	Lloyd }
{ Do.	Paynter }
{ Hawley	Spencer
{ Lanphim	Royle
{ Brigg	Hobson

**Vice-Chancellor Stigiam.****CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.**

Ridgway	Roberts demr.
Lund	Blanshard 2 dems.
4 Nov. Broad (pauper)	Robinson
Day to be fixed	Barnett
Do. Vincent	Deane
Do. Neeld	Bishop of Sodor and Man
Do. Do.	Dk. of Beaufort } two causes
2 Nov. Johnson	Austin } causes
20 Nov. Butler	Child fur. dirs. fur. argued
Harris	Fleming
Rawlins	Harris exons.
Bond	Moss do.
Clements	Graham fur. dirs. & costs
Cooke	Tibbs do.
{ Woodward	Fryer 3 causes do.
{ Smith	Conebeer
{ Percival	Do.
Millalieu	Carter
Penfold	Miller } fur. dirs. & eqy. read.
Neesom	Bouch
Vivian	Clarkson re-hearing
Roberts	Cochrane
Hughes	Marchant
Hedger	Wall
Thompson	Yates
Garner	Tooley
{ Dobson	Hallam fur. dirs. & costs
{ Do.	Hooper }
{ Egginton	Dobson } do.
{ Fry	Burton
{ Stonard	Fry fur. dirs. and costs
{ Lee	Stiff do.
{ Massey	Pain exons. 3 sets
	Moss fur. dirs. and costs

**New Causes.**

{ Turner	Pott
{ Do.	Eades
{ Rochester	Gibson
{ Do.	Kirsopp
{ Phillips	Burwash
Short Cartledge	Johnson
{ Sharp	Collard
{ Do.	Bulton

**THE EDITOR'S LETTER BOX.**

We shall be glad to receive the proposed communications on the anticipated measures of Law Reform, and they shall have immediate attention.

A correspondent at Southampton is informed, that a judges' order may be obtained to enlarge the time for admission on the examiner's certificate beyond the term next following the examination. The order is granted from time to time as the judge may deem proper, according to the circumstances of the case. It has been sometimes enlarged for twelve months.

The Legal Almanac for 1845 will be ready in a few days.

# The Legal Observer, OR, JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 16, 1844.

— "Quod supplex nos  
Partinet, et neque analum est, agimus.

HOPKIN,

## THE POWER TO DISBAR.

THE very painful subjects of the state of the bar and the power to disbar are again forced upon us this week. It is possible that before this number is in the hands of the public, events may have occurred which will call general attention to the subject, and that it will have been proved necessary to deal with severity in one or more of the cases which have found their way into the public prints. There we shall leave them; we have, as far as possible, abstained from mentioning any names in this matter; it is indeed most unwillingly, and only as a matter of necessity, that we again allude to the subject at all: but our silence might be misconstrued.

We have already said that in our opinion the law on this subject is clear.<sup>a</sup> We have shown that from the days of Edward the First a controlling power over the bar has been vested either in the judges or in the benchers, and that it now exists in the latter. We stated, from Lord Coke, that although a barrister is not sworn, yet he is within the words of the stat. 3 Edw. 1, c. 29, and that the judges, having had this power, now recognise it as existing in the governing bodies, the Inns of Court. We might further have added the words of Blackstone: he says,<sup>b</sup> "Counsel guilty of deceit or collusion are punishable, by the statute Westm. 1, 3 Edw. 1, c. 28, with imprisonment for a year and a day, and perpetual silence in the courts; a punish-

ment still sometimes inflicted for gross misdemeanors in practice." Mr. Serjeant Stephen, in his version or commentary on this passage, says, "A punishment that, even in modern times, has been inflicted for gross misdemeanor in practice;" and Mr. Stewart<sup>c</sup> is even more distinct, in his edition of Blackstone, as he adds, "*or they (counsel) may be disbarred by the Inns of Court*," citing the case we have already referred to.

The law, therefore, as to this is quite clear, and we should not have restated it, if we had not heard it surmised that the power did not exist at all, or at any rate, had not been recently exercised.

That it did exist there can be no doubt; and it is certainly to the honour of the bar that many recent cases have not occurred in which it has been exercised; but we must further state that it has been recently exercised. It is to be observed, that these cases are not reported, and do not always find their way even into the newspapers. The tribunal before which they occur, is, and must be, and should be, a secret one. But if we have not been greatly misinformed, a case did occur in 1839, in which a matter of this sort was solemnly argued by counsel, before the fifteen judges, at Serjeants' Inn, not in their judicial capacity, but as visitors of the Inns of Court, in which the right of these societies to expel and disbar a barrister was distinctly recognised, subject, as we have already said, to an appeal to these same judges.

<sup>a</sup> 28 L. O. 466.

<sup>b</sup> 3 Com. 29.

<sup>c</sup> 3 Steph. Com. 389.

<sup>d</sup> 3 Stewart's Blackstone, 30, 2nd edit.

This being so, there can be but one other point to consider,—which is, when the power arises—where it may be fairly and properly exercised. And as to this, we can only repeat our opinion, that this must be left entirely to the discretion of the benchers; in them the honour of the bar is reposed; and they must be its judges. That it is a painful, delicate duty all must admit; the more so that although as a whole the benchers of the Inns of Court are a highly respectable and honourable body of gentlemen, yet we must all know that a man may be thus elevated, who has not passed through the strife and warfare of the profession utterly without reproach; the wave of fortune may have borne up a weed on its surface, and although it may be placed high and dry, yet it is still a weed. There have been but few such; but it is not impossible, that in telling the history of his past life, some one member even of this truly honourable body might use the words of Henry the Fourth:—

“Heaven knows, my son,  
By what by-paths and indirect crook'd ways  
I met this crown.”

This being so, the task is rendered even more difficult, more odious, more painful, and it must be with deep sorrow that its discharge is to be approached, as it consigns a member of the same profession, a fallen brother—for every barrister, however humble, is a brother—to disgrace, and possibly to ruin. No man, therefore, with a spark of honourable or proper feeling; can on such an occasion give vent to any vindictive, bitter, or even eager feeling; still less pander to the gross and brutal taste of the public, on finding a lawyer in a scrape.

Nevertheless, we are bound to say, that if a case of gross unprofessional conduct is brought home to any barrister, and can be clearly established against him; if, after he has been called on for his defence, he is duly heard, either by himself or counsel, as he may wish or think best; if the strict sense of justice in this matter has been duly tempered with a kind and considerate feeling,—necessary in this kind of domestic tribunal; if, after all this, no fair or proper justification can be given, why then it appears to us there is only one course that can properly be taken.

We have thought it right thus to state our opinion; and we now confidently leave the matter in the hands of the benchers.

## NOTES ON EQUITY.

### LIABILITY OF EXECUTORS.

THERE have been several recent cases as to the liability of executors. In *Bullock v. Wheatley*, 1 Coll. 130, executors were held personally liable in respect of the loss to the testator's estate, of a sum outstanding on personal security; although the security was that of the bond of the testator's solicitor, and the money had been invested in that security by the testator some years before his death. By his will the testator directed that his trustees should get in his outstanding personal estate “as soon as conveniently might be,” after his decease. The testator died in 1835, and the bond appeared to have been found amongst the testator's effects in the year 1842, and not before. For some years, however, previously to that time, the executors received interest upon it from the solicitor, and they handed over such interest to the tenant for life under the testator's will. Sir K. Bruce, V. C., said—“Painful as the case is, I think it unfortunately so clear of difficulty, (an opinion confirmed by reflection and an examination of authorities last night and some examination of the pleadings this morning,) that I ought not to cause the parties further expense or anxiety by deferring my judgment another day. \* \* \* It may be true that the executors, whose integrity I do not doubt, wished and meant to act properly, and were guided by the advice of the solicitor whom the testator employed and trusted, namely, Lediard himself, (this was the name of the solicitor.) This, however, though it may add hardship to the case, cannot in my judgment avail them.

A trustee committing a breach of trust is not protected from its consequences, by the circumstance that he honestly took and followed the advice and opinion of his solicitor, whatever remedy he may have against that solicitor; nor can it make any difference that the solicitor was also the solicitor and adviser of the author of the trust \* \* \* It is not necessary in this case to say, whether during the first year or even the first two years after the testator's death, there was unjustifiable delay or culpable negligence, terms which I use of course technically, and not disrespectfully; but in 1838, he had been dead three years, and I am clearly of opinion that in or before the year 1839, the executors

ought to have placed themselves, if they were not originally in a condition to sue, and ought rather to have obtained substantial security, or (if this could be denied or doubted) that they ought to have done so in 1840 or 1841.

In another very recent case before the same learned judge, executors or trustees were decreed to pay the costs of a suit rendered necessary by their having refused to pay over the trust fund on reasonable evidence of a person's death. But inasmuch as the trustees had been guilty of a breach of trust in relation to the fund, such costs were decreed to be paid out of the assets of the trustees, and not personally by the executor. *Lyse v. Kingdon*, 1 Coll. 185.

#### DOUBLE SUIT.

✓ A creditor's bill was filed, which also prayed other relief. Soon after a purely creditor's suit was instituted by another party, and a decree obtained therein within seven days. Lord Langdale, M.R., ordered that all further proceedings in the first suit, so far as the administration of the assets of the intestate was thereby sought, should be stayed, and he gave to the plaintiff in the first suit liberty to go before the Master in the second, and prove for what he might eventually establish in the first cause.—*Dryden v. Foster*, 6 Bea. 146.

#### DELIVERY OF CHATTELS.

✓ A bill was filed for the delivering up of specific chattels mentioned in an inventory, deposited by the plaintiff with his agent, who fraudulently contracted to assign them to another person, who advertised them for sale. The bill also prayed an injunction against the agent and such person, to restrain the sale, and to restrain both from parting with the goods. A demurrer to this bill was overruled by Sir J. Wigram, V. C. It was urged that the jurisdiction to enforce the delivery of specific chattels is not exercised except in cases where the chattel has some value annexed to it, or some character impressed upon it which is not transferrable to any other article of the same kind, and when the loss of the particular thing would be irreparable. But the Vice-Chancellor repudiated this doctrine: "I have not the slightest doubt," he said, "that the plaintiff is entitled to the protection of the court against the wrongful act which is threatened by his agent.

I have known many bills to have been filed in the Court of Exchequer, formerly, on behalf of the owners of cargoes, to prevent improper dealings with the goods by their agents, or persons in the situation of agents. The right to be protected in the use or beneficial enjoyment of property in specie is not confined to articles possessing any peculiar or intrinsic value."—*Wood v. Ross-cliffe*, 3 Hare, 304.

We shall, in a future number, notice the cases as to the delivering up of chattels, which are very curious.

### THE CHANCERY COMPENSATIONS. FURTHER REDUCTION OF FEES.

It seems that the question of the compensation of the sworn clerks, &c., under the 5 & 6 Vict. c. 103, is not quite set at rest. According to the *Morning Chronicle*, Mr. Watson is to renew his motion for a committee, in the next session. We can only express our regret that the bed of roses which was made for the sworn clerks, and others included in those, to them so agreeable clauses, should in any way be ruffled. We may briefly observe, that in these pages the great arguments against that compensation were first urged. The advantages of the discussion which has taken place in this matter are, that the fees have been rapidly reduced.

The *Times* of the 15th thus states the several reductions, including the new order of the 13th instant from 8d. to 4d., and the estimated amount of the whole reduction within the last eight months, is £18,000 a year, or one-fourth of the total receipts:

"By the first order of 22nd March last, an old fee was reduced from 10d. to 8d. per folio of ninety words. Thus a reduction of one-fifth was effected in the office of the *Clerks of Records and Writs*.

By the second order, of 15th April, an old charge of 1s. 2d. per folio was reduced, in the *Examiners' office*, to 8d.

By the third order, of 21st June, the reduced charge of 8d. per folio, in the two offices of the *Clerks of Records and Writs*, and of the *Examiners'*, was again reduced to 6d.,—i. e. by one-fourth.

By an order just issued, dated the 13th of November, the reduced charge of 6d. per folio upon copies in these two offices, has been still further reduced to 4d. per folio."

# CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

## RAILWAYS.

7 & 8 VICT. C. 85.

An act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any act of the present or succeeding Session of Parliament; and for other Purposes in relation to Railways. [9th August, 1844.]

*If, after twenty-one years from the passing of the act for the construction of any future railway, the profits shall exceed 10l. per cent., the treasury may revise the scale of tolls, and fix a new scale. Proviso.—1.* Whereas it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public: Be it enacted, That if at any time after the end of twenty-one years from and after the first day of January next after the passing of any act of the present or any future session of parliament for construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be constructed by a new company incorporated for the purpose or by any existing company, the clear annual profits divisible upon the subscribed and paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the lords commissioners of her Majesty's treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing of their intention so to do, to revise the scale of tolls, fares, and charges limited by the act or acts relating to the said railway, and to fix such new scale of tolls, fares, and charges, applicable to such different classes and kinds of passengers, goods, and other traffic on such railway, as in the judgment of the said lords commissioners, assuming the said qualities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred: Provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares, and charges shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock: Provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

*Option of purchase for future railways. Proviso.—2.* That whatever may be the rate of divisible profits on any such railway it shall be lawful for the said lords commissioners, if they shall think fit, subject to the provisions

hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock, and appurtenances, in the name and on behalf of her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: Provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase money shall be paid to the said company: Provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares, and charges shall be in force.

*Existing railways not to be subjected to the options.—3.* That the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

*Reservation of parliament of the consideration of future policy in regard of the said options.—4.* And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of the legislature, upon grounds of general and national policy: And whereas it is not the intention of this act that under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies; be it enacted, That no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by parliament, by an act or acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either House of Parliament unless it be recited in the preamble to such bill that three months' notice of the intention to apply to parliament

for such powers has been given by the said lords commissioners to the company or companies to be affected thereby.

*Accounts.*—5. Accounts to be kept, and to be open to inspection.

*Companies to provide one cheap train each way daily.*—6. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather; be it enacted, That on and after the several days hereinafter specified all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall, by means of one train at the least to travel along their railway from one end to the other of each trunk, branch, or junction line belonging or be leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week day, except Christmas-day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say.)

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Lords of the Committee of Privy Council for trade and plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the lords of the said committee:

The fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled:

Each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being merchandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains:

Children under three years of age accompanying passengers by such train shall be taken

without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

And with respect to all railways subject to these obligations which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereto, which shall first happen.

7 *Penalty for non-compliance, 20*l.* a day.*

*Board of Trade to have a discretionary power of allowing alternative arrangements.*—8. Provided always, and be it enacted, That, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates herein-before in such case provided, the lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions herein-before required, in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the lords of the said committee in regard to the said cheap trains and the passengers conveyed thereby.

9. *When no tax to be levied.*—And be it enacted, That no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid.

10. Where companies run trains on the Sunday cheap trains to be likewise provided.

11. Railway companies to afford additional facilities for the transmission of the mails. 1 & 2 Vict. c. 98.

12. Certain companies to convey military and police forces at certain charges. 5 & 6 Vict. c. 55.

13. Companies to allow lines of electrical telegraph to be established.

14. Electrical telegraph established by private parties to be open to the public.

15. *Appointment of inspectors by Board of Trade.* 3 & 4 Vict. c. 97.—And whereas by an act passed in the fourth year of the reign of her Majesty, intituled "An Act to regulate Railways," power is given to the lords of the said committee to appoint any proper persons or persons to inspect any railway, and the stations, works, and buildings, and the engines

and carriages belonging thereto; and in order to carry the provisions of this act into execution it is expedient that the said power be extended; be it enacted, That the said power given to the lords of the said committee of appointing proper persons to inspect railways shall extend to authorize the appointment by the lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the lords of the said committee to carry the provisions of this and of the said act, and of any general act relating to railways, into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

16. Repealing provision of 3 & 4 Vict. c. 97.

*Contravening provisions.*—17. If railway companies contravene or exceed the provisions of their acts, or of any general act, the Board of Trade to certify the same to the Attorney-General, &c., who shall proceed against them.

18. Notice to be given to the company. Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

19. Issue of loan notes and other illegal securities by railway companies prohibited. Loan notes already issued may be renewed.

20. Loan notes already issued to be paid when due.

21. Register of loan notes.

*Remedy for recovery of tithe rent charged on railway land.*—22. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in *England* and *Wales*, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress

when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

*Communications to and from Board of Trade, service of notices, &c.*—23. And be it enacted, that all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the lords of the said committee, shall for the purposes of this act be deemed to have been made by the lords of the said committee; and all certificates of any thing done by the lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee, shall be delivered at or sent by post addressed to the office of the lords of the said committee.

*Penalties.*—24. And be it enacted, that all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of Her Majesty, and may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriff courts in *Scotland*.

25. Interpretation of act.

26. Act may be amended this session.

## LORD ELDON'S FIRST SUCCESS ON THE CIRCUIT.

In our last volume, (p. 468,) we concluded the account of Mr. Scott's success in the metropolis. Similar circumstances of good fortune operated on the circuit:—

"The following story is current at the bar, of Mr. Scott's first success on the circuit in a civil action: The plaintiff was a Mrs. Fermor, who sought damages against the defendant, an elderly maiden lady, named Sanstern, for an assault committed at the whist table. Mr. Scott was junior counsel for the plaintiff; and when the cause was called on, his leader was absent in the crown court, conducting a government prosecution. Mr. Scott requested

that his cause might be postponed till his eader should be at liberty; but, the judge refusing, there was no help, and Mr. Scott addressed the jury for Mrs. Fermor, and called his witnesses. It was proved that at the whilst table some angry words arose between the ladies, which at length kindled to such a heat, that Miss Sanstern was impelled to throw her cards at the head of Mrs. Fermor, who (probably in dodging to avoid these missiles) fell or slipped from her chair to the ground. Upon this evidence, the defendant's counsel objected that the case had not been proved as alleged; for that the declaration stated the defendant to have committed the assault with her hand, whereas the evidence proved it to have been committed with the cards. Mr. Scott, however, insisted that the facts were substantially proved according to the averment in the declaration, of an assault committed with the hand: for that, in the common parlance of the card-table, the hand means the hand of cards; and thus, that Miss Sanstern, having thrown her cards in Mrs. Fermor's face, had clearly assaulted Mrs. Fermor with her hand. The court laughed; the jury, much diverted, found the plaintiff's allegations sufficiently proved; and the young counsel had the frolic and fame of a verdict in his favour."

"It has been supposed," says Mr. Twiss, "that to this verdict Mr. Scott was indebted for the large practice which he soon afterwards obtained on the northern circuit; but the three following instances show that no single exploit was the cause of his extensive success." For the first of them Mr. Twiss is indebted to the kindness of Mr. Spence, Q.C., who gives it in these words:—

"I was about to join the northern circuit in 1815, when the late Mr. Bell took me to one of Lord Eldon's levees. On my first introduction, Lord Eldon accosted me thus: 'So you are going to join my old circuit; you will perhaps be surprised to hear that I was first brought into notice on that circuit by breaking the Ten Commandments.' I should have supposed him to mean that he had read his briefs on Sunday, but there was that good-humoured gleam of the eye, which every one who recollects him will understand, and which puzzled me. He continued,—'I'll tell you how it was: I was counsel in a cause, the fate of which depended on our being able to make out who was the founder of an ancient chapel in the neighbourhood. I went to view it. There was nothing to be observed which gave any indication of its date or history. However, I observed that the Ten Commandments were written on some old plaster, which, from its position, I conjectured might cover an arch. Acting on this, I bribed the clerk with five shillings to allow me to chip away a part of the plaster; and, after two or three attempts, I found the key-stone of an arch, on which were engraved the arms of an ancestor of one of the

parties. This evidence decided the cause; and I ever afterwards had reason to remember, with some satisfaction, my having on that occasion broken the Commandments.'

Mr. Twiss then states that Mr. Scott's first success at Durham was in the case of *Adair v. Swinburne*. The circumstances by which the lead of this cause devolved upon him are recorded by Mr. Farrer, from his own narrative:—

"An issue had been directed out of the Court of Exchequer to be tried at Durham, upon a question of very great importance to coal owners. We had a consultation at Durham, at which were present most of the leaders of the northern circuit,—Jack Lee, Tom Davenport, and others. After we had had a good deal of discussion, Lee said, 'Scott, you must lead this to-morrow;' and, the other counsel assenting, I agreed to do so. 'But why, Lord Eldon, did they put you to lead?' 'Oh, you must know I had been counsel in all the proceedings in the Exchequer; besides, perhaps they thought that I had an advantage over them in having been born and bred in a coal country. Well, they insisted upon my leading, and I said I would do my best. Next morning we went into court. We had a special jury of gentlemen of the country, most intelligent men, well acquainted with coal and collieries. Buller, who was trying the issue, when I rose to reply, after the defendant's case was closed, said to me, 'Mr. Scott, you are not going to waste the time of the court and of the jury by replying!' The sequel of the story is more fully detailed in Mrs. Forster's report of Lord Eldon's narrative to her. Said Mr. Justice Buller, 'You have not a leg to stand upon!' Now this was very awkward to a young man, and the judge speaking so decidedly. However, I said, 'My lord, in ninety-nine cases out of a hundred, I would sit down, upon hearing the judge so express himself; but so persuaded am I that I have the right on my side, that I must entreat your lordship to allow me to reply, and I must also express my expectation of gaining the verdict.' Well, I did reply, and the jury—Charles Brandling was foreman—retired, and, after consulting six or eight hours, they returned, and actually gave a verdict in my favour. When I went to the ball that evening I was received with open arms by every one. Oh! my fame was established; I really think I might have married half the pretty girls in the room that night. Never was man so courted. It certainly was very flattering to be so received; but yet it was painful, too, to mark the contrast from the year before: it certainly was not my fault that I had no cause to lead the year before."

"But I must not omit to tell you the conclusion. I went to Carlisle, and there Buller sent for me, and told me he had been thinking over that case on his way from Newcastle, and he had come to the conclusion that he was entirely wrong, and I was right; therefore he



had sent for me to tell me this, and to express his regret for having stopped, or attempted to stop me in court. This was very handsome in him; but it certainly had been a very awkward predicament for a young man. This cause raised me aloft."

The Anecdote Book gives the following account of his first introduction to business at Carlisle:—

"I was at the assizes for Cumberland in seven successive years before I had a brief. It happened that my old friend Mr. Lee, commonly called Jack Lee, was absent in the criminal court, when a cause was called on in the civil court, and some attorney, being by that absence deprived of his retained counsel, was obliged to procure another, and he gave me a guinea, with a scrap of paper as a brief, to defend an old woman in an action for an assault, brought against her by another old woman. The plaintiff had been reposing in an arm-chair, when some words arising between her and my client, the latter took hold of the legs of the chair, and in fact threw the plaintiff head and heels over the top of the chair. This sort of assault of course admitted of easy proof; and a servant maid of the plaintiff's proved the case. I then offered in court that a chair should be brought in, and that my old female client should place herself in it, and that the lady (the plaintiff) should overset the chair and my old woman, as she had been upset herself. Upon the plaintiff's attorney refusing this compromise, the witness (the servant maid) said that her mistress (the plaintiff) was always willing to make up the matter, but that her attorney would never allow her to do so, and that her mistress thought she must do as her attorney bid her do, and had no will of her own. 'So then,' observed I to the jury, knowing that her attorney's name was Hobson, 'this good lady has had nothing for it but 'Hobson's choice.' And pray then, gentlemen," I added, 'as the good woman wants no damages, and the cause is Hobson's, give him but a penny at most, if you please.' This penny the jury gave. When I record that in the same assizes I received seventy guineas for this joke, —for briefs came in rapidly,—I record a fact, which proves that a lawyer may begin to acquire wealth by a pleasantry, who might long wait before professional knowledge introduced him into notice and business.' As he had been seven years on the circuit, this lucky cause may probably have been heard about the summer of 1782."

The memorable argument in *Ackroyd v. Smithson* had fixed the attention of Lord Chancellor Thurlow upon Mr. Scott, whom he now treated with great distinction, in private as well as in public.

"It has been said, that soon after that argument, Mr. Scott received, and declined, the offer of a mastership in Chancery; but when his grandson asked him about this, in his

latter years, he said he had no recollection of it; nor is it likely that any man, not in the greatest business, would have rejected such an advancement. He was even anxious at that time to be made a commissioner of bankrupts. It has been supposed that he actually obtained such a nomination; but this is a mistake, induced apparently by the fact that there was, in his early life, a commissioner of bankrupts named John Scot, a member of Gray's Inn. Lord Eldon's account of the matter to Mrs. Forster was this: 'Thurlow became my steady friend, but he showed it rather oddly in one circumstance. Sir Grey Cooper had written to him to ask him to give me a commissioner of bankrupts, and he promised he would. Now, you know a hundred and sixty or seventy pounds a year would have been a great thing to us; but he never did. In after life I reminded him of his promise, and inquired why he had not fulfilled it, and his answer was curious:—'It would have been your ruin. Young men are very apt to be content when they get something to live upon; so when I saw what you were made of, I determined to break my promise, to make you work;'—and I dare say he was right, for there is nothing does a young lawyer so much good as to be half starved: it has a fine effect. But it was rather a curious instance of Lord Thurlow's kindness."

The following anecdote, quoted by Mr. Twiss, rests on the authority of the *Observer* newspaper, but its accuracy is not questioned by the learned biographer:—

"When the late Lord Eldon was plain Mr. Scott, but a rising member of the bar, the hair-dresser who attended him took an opportunity of mentioning that an acquaintance of his was entitled to considerable property if he had his right. Mr. Scott listened to the statement, and felt interested in it. With a goodness of heart which did him honour, he told his informant to go to Mr. Giles Bleasdale, the predecessor of the highly respectable firm of Holmes, Frampton, and Loftus, and state the particulars to that gentleman. The worthy tonsor did so; Mr. Bleasdale reduced the facts into writing; and, by the advice of Mr. Scott, proceedings were commenced to recover the property in question. Mr. Scott, however, told Mr. Bleasdale, that although he should not expect any fee during the progress of the cause, he wished an accurate account to be kept of the amount to which he would be entitled at the termination of the suit. Mr. Scott was ultimately successful for his client, and, on the winding up of the business, Mr. Bleasdale waited upon him with a well-filled purse or canvas bag, containing the whole of his fees in gold. Mr. Scott smiled with evident satisfaction, but recollecting himself, he sent for the hair-dresser who had first introduced the subject to him.

"The hair-dresser making his appearance, was congratulated on the success of his friend

by Mr. Scott, who then added—'As you have yourself had a good deal of trouble in the affair, take that purse,' and handed over to the astonished perruquier the whole of the sum brought by Mr. Bleasdale as his fees."

In the spring of 1783, the Lords Commissioners of the Great Seal purposed calling within the bar a few of the most eminent among the junior counsel.

"Mr. Scott received a message from the Duke of Portland; through the Lords Commissioners, offering to include him in this promotion. Mr. Scott, with his habitual prudence, took time to deliberate; and what followed has been thus related by himself in the anecdote book, and in his conversations with Mrs. Forster and Mr. Farrer:—

"After some hesitation, I communicated my intention of accepting the offer, answering, that I should feel honoured and gratified in doing so. Now this was on the Wednesday, and on the Thursday I found that Erskine and Pigott, both of them my juniors, were also to have silk gowns, and that they were to be sworn in on Friday, whilst Saturday was appointed for me to be sworn in; so I immediately wrote to say, that though I had felt highly honoured in being offered a silk gown, and had gratefully accepted it, yet as I found Mr. Erskine and Mr. Pigott, my juniors at the bar, were to be put over me, by being sworn in the day previous to myself, I must beg leave to retract my acceptance, as I could not consent to accept promotion accompanied by any waiver of my professional rank: and this letter I sent. I was called before the Lords Commissioners, who took great pains to induce me to alter my purpose. One of them said, Mr. Pigott was junior at the bar to Mr. Erskine, and yet he had consented to let Mr. Erskine take precedence of him. I answered, 'Mr. Pigott is the best judge for himself: I cannot consent to give way, either to Mr. Erskine or Mr. Pigott.' Another said, 'Mr. Scott, you are too proud.' 'My lord, with all respect I state it is not pride: I cannot accept the gown upon these terms.' After much difficulty, and particularly as the patents of Erskine and Pigott had passed the seal, the matter seems to have been arranged; for on the Saturday I received a patent, appointing me to be next in rank to Peckham, and placing Erskine and Pigott below me, though in fact both of them had been sworn in the day before me; and that patent I have to this day."

"Lord Eldon, referring in his anecdote book to the course he had taken in the matter of this promotion, says, that the transaction made some noise at the time: and expresses his belief that it had a very considerable effect and influence in producing the subsequent successes of his professional life. 'Did you think,' said Mr. Farrer to him; 'that it was so important to insist upon retaining your rank?' 'It was everything,' he replied, with great earnestness; 'I owed my future success

to it.' He does not exemplify this impression by any particular incidents of his subsequent life; but those who are acquainted with the profession of the bar, will be fully aware of the advantages accruing to a man of acknowledged abilities, from a character early established for independence and self-respect.

"Mr. Peckham, who received the offer of promotion at the same time with Mr. Scott, and who, like him, was senior both to Mr. Erskine and Mr. Pigott, followed this manly example, and asserted his seniority with great effect."

Mr. Scott having thus, at the age of 32, become one of his Majesty's counsel, we shall for the present close our notice of his distinguished career.

## ANNUAL REGISTRATION OF ATTORNEYS AND SOLICITORS.

We published extracts from the Attorneys' and Solicitors' Act with the regulations at the office of the registrar of attorneys and solicitors, on the 21st September, p. 385, of our last volume.

As the delivery of the certificates will commence on Wednesday the 20th instant, to the London Agents, they are now reminded that the lists of their country clients should be sent in immediately. The declaration under the 6 & 7 Viet. c. 73, must be left at the office of the Law Society six days before any certificate thereon can be issued.

The following is extracted from the regulations:—

"In the first six days, commencing on November 20, certificates will be delivered only to such London Agents as shall, in due time previously, have sent in the declarations of themselves and their country clients, accompanied by a list thereof, arranged in alphabetical order, and written on foolscap paper bookwise.

"These six days will be appropriated among the London Agents, according to the letter with which their surnames, or those of the senior partner in the firm, commence in the following order:—

"Those commencing with—  
A or B, on Wednesday Nov. 20.  
C, D, E, or F, on Thursday 21.  
G, H, I, or J, on Friday 22.  
K, L, M, N, O, or P, on Saturday 23.  
Q, R, or S, on Monday 25.  
T, U, V, W, X, Y, or Z, on Tuesday 26.

"On every day subsequent to November 26, the certificates will be delivered to the rest of the profession."

## ATTORNEYS TO BE ADMITTED.

*On the last day of Michaelmas Term, pursuant to Judges' Orders.**Queen's Bench.**Clerks' Names and Residence.**To whom Articled, Assigned, &c.*

Burbeary, James Pashley, Oakholm	Benjamin Burbeary, Sheffield
Charlton, Cuthbert, 189, Oxford Street; and Morpeth	Charles Few, Henrietta St., Covent Garden
Estcourt, Charles Wyatt, 11, Chester Terrace, Eaton Square; and Newport, Isle of Wight	Anthony Charlton, Morpeth
Langston, Henry, 11, Blisset Street, Greenwich; and City Terrace, and Cannonbury Street, Islington	Henry Sewell, Newport
Simpson, Richard, the younger, 4, Marsden Street, Manchester; and Derby	John James, Presteign
Udall, Thomas, 1, John Street, Bedford Row; 5, New Millman Street; and Judd Street	William Slater, Manchester
	John Slade, Yeovil
	Robert Lucas

*Hilary Term, 1845.*

Austin, Isaac L'Estrange Southgate, 128, Upper Seymour Street, Euston Square.	John Peter Fearon, 1, Crown-Office Row, Temple
Armstrong, George, 7, Thanet Place, Strand; and Workington	John Henning, Weymouth
Abrahams, Samuel, jun., 9, Burton Crescent	Charles Thompson, Workington
Aldham, George, 4, St. George's Terrace, Islington	Samuel Abrahams, Burton Crescent
Adams, Llewelyn, 2, Prince's Place, Kennington Cross; Ruthin	William Saunders, Worcester
Brandt, Charles Henry, 4, Warwick Court; Manchester; 14, Rolls Buildings; and 2, Fig Tree Court, Temple	Joseph Peers, Ruthin
Bird, William Robinson, 6, Wardrobe Terrace, Doctors' Commons	Henry Charlewood, Manchester
Burbeary, James Pashley, Oakholme, York	Thomas James, Brompton
Buttery, John Hopkinson, Nottingham	John Lee Bell, Brompton
Bonnor, George, 19, James Street, Buckingham Gate; and Gloucester	Benjamin Burbeary, Sheffield
Burbury, Daniel Winter, 8, St. George's Place, Liverpool Road	Charles Few, Henrietta St., Covent Garden
Bignold, Edward Samuel, 26, Great James Street; Norwich	John Buttery, Nottingham
Bateman, Joshua Wigley, 8, Avenue Road, St. Mary-le-bone	Benjamin Bonnor, Gloucester
Bearcroft, Henry, 26, Great James Street; Mere Hall, near Droitwich; Bewdley; Torquay; and Bury Street, St. James's	Edward Washbourne, Gloucester
Cunningham, Charles, junior, 19, Nutford Place, Bryanston Square	Jackson Walton, Warrford Court
Clarke, William, junior, 8, Jeffrey Square; and Thetford	Thomas Bignold, Norwich
Cornock, Thomas Morris, 13, Chatham Place, Blackfriars	Henry Hughes, Northampton
Crawford, Samuel, Leeds	William H. Brabant, Saville Place
Corser, Edward, Birmingham	John Bury, Bewdley
Croome, John Wise, Middleton Cheney; and 21, Bartlett's Buildings	Charles Williams, 19, Ely Place, Holborn
	John Galsworthy, 19, Ely Place, Holborn
	William Clarke, Thetford
	William Gresham, 3, Castle Street, Holborn
	Joseph Benson, Gray's Inn Square
	Daniel Comthwaite, 14, Old Jewry Chambers
	Thomas Mann Lee, Leeds
	Henry Corser, Stourbridge
	Robert Wilton, Gloucester

Capron, Frederick Lucas, New Burlington Street . . . . .	Charles Markham, Northampton W. H. Brabant, Saville Place
Cole, John, Lostwithiel; and 2, Baker Street . . . . .	Edward Coodo, junior, St. Austell
Caldar, Edward, Cheltenham; York . . . . .	Luke Thompson, York
Chew, Thomas Heath, Manchester . . . . .	William Christopher Chew, Manchester
Cleave, John Jones, Hereford . . . . .	John Cleave, Hereford
Davies, Thomas, 17, Amwell St., Pentonville; 1, Verulam Buildings; Hay; and Bulth . . . . .	William Pugh, Hay
Dryden, Erasmus Henry, 15, Tavistock Place; Hull; and 30, Sidmouth Street . . . . .	William Dryden, Kingston-upon-Hull
Davenport, Frank Baddeley, Tunstall; and Canonbury Street . . . . .	William Harding, Burslem
Donville, William Henry, 6, New Square . . . . .	Henry Denton, Lincoln's Inn
Dix, Thomas, Newcastle-under-Lyme . . . . .	John Ford Hyatt, Newcastle-under-Lyme
Dunn, William Laidler, Gloucester House, Newcastle-upon-Tyne; and Somers Town . . . . .	John Anderton Pybus, Newcastle-upon-Tyne
Dixon, William, 55, Lincoln's Inn Fields; Hammersmith; and Putney . . . . .	Robert Maugham, 100, Chancery Lane
Edwards, Thomas Gold, Denbigh . . . . .	Edward Hugh Edwards, 1, Mitre Court Buildings, Temple Thomas Evans, Denbigh
Edwards, James, 43, Gloucester Street; and Lime Street . . . . .	Charles Edwards, Totnes
Estcourt, Charles Wyatt, 11, Chester Terrace, Eaton Square; and Newport, Isle of Wight . . . . .	Henry Sewall, Newport
Everill, Thomas George, Birmingham . . . . .	George Price Hill, Birmingham
Fendall, Thomas Walcot, 1, Harewood Square . . . . .	Philip Reeve, Lincoln's Inn
Franklin, George Fairfax, 99, Gloucester Pl., Portman Square; Attleburgh; and Hanover Street . . . . .	Frederick Fairfax Francklin, Attleburgh William Henry Moberly, Southampton
Goater, Thomas, Southampton . . . . .	Thomas George, Cardigan
George, William Griffith, 46, Great Russell Street; Cardigan; and Newman Street . . . . .	Stafford Stratton Baxter, Atherstone Michael Baxter, 48, Lincoln's Inn Fields
Geary, John Thomas, 14, Denmark Street, Islington; 48, Lincoln's Inn Fields; White Conduit Terrace; Elizabeth Terrace; and Kingston-upon Hull . . . . .	George Joseph Twiss, Cambridge
Green, Octavius, 33, Devonshire Street, Queen's Square; and Chesterton . . . . .	James Randolph, Milverton
Gooding, Edward Bryant, 12, Arundel Street, Strand; Milverton; Hampstead Road; and Norfolk Street . . . . .	Arthur Haymes, Lemington Priors Thomas W. Capron, Saville Place, New Burlington Street
Gardner, Robert, 76, Margaret Street, Cavendish Square . . . . .	John Postlethwaile Myers, Broughton-in-Furness
Hodgkin, Christopher, 163, Grove Street, Camden Town; Broughton-in-Furness; and 60, Burton Crescent . . . . .	George Burham, Wellingborough Edward Elwin, Dover
Hodson, Septimus, Wellingborough; and 4, Everett Street, Russell Square . . . . .	William B. Bishop, Verulam Buildings Joseph N. Mourilyan, Verulam Buildings
Harvey, Richard, 3, Calthorpe Street, Gray's Inn Road; and 12, Compton Street East, Regent Square . . . . .	Christopher Pemberton, Cambridge
Hayward, Charles Woodcock, 1, Garden Place, Lincoln's Inn Fields; and Cambridge . . . . .	Benjamin Aplin, Banbury
Heming, William Waters, Banbury . . . . .	John Dodsworth, Selby Mark Fothergill, Selby
Hodgson, Charles, Selby and Howden . . . . .	Robert B. Porter, Howden Robert Wilson, Copthall Buildings Charles K. Freshfield, New Bank Buildings
Harrison, William Frederick, St. Ann's Hill, Wandsworth . . . . .	Thomas Hodgson, Castlegate
Hodgson, Edward, York . . . . .	Jonathan Hadcock, Mold
Hughes, John Spier, Nannerch Rectory, Flint; and Manchester . . . . .	William Slater, Manchester

**MICHAELMAS TERM EXAMINATION.**

THE newspapers, following the printed list placed up at Westminster, have noticed the very large number of applicants for admission on the roll of attorneys in the present term, as being nearly 200. We learn, however, that the number for examination is about 130; and of these it is probable a considerable proportion will content themselves with passing the examination and defer their admission. Many after they are admitted do not take out their certificates to practise for a considerable time, and others are admitted in order to go to some of the colonies, where an admission in the courts at Westminster entitles them to be admitted and practise in the colonial courts. The remainder added to the profession in England and Wales will not be fearfully large, though, we admit, quite large enough.

**REVIVAL OF IRISH JUDGMENTS.**

THE attention of our readers is called to the 7 & 8 Vict. c. 90, passed in the last session of parliament, which enacts, that all judgments obtained in any of the law courts in Ireland, which have not heretofore been redocketed or revived under the provisions of the act 9 Geo. 4, c. 35, or which shall not be redocketed in accordance with the provisions of that act, on or before the 1st day of November instant, shall be registered in the manner directed by the 7 & 8 Vict. c. 90, in the office to be established under that act for the registry of judgments, recognizances, crown bonds, &c. in Ireland. If not so registered, all such judgments, &c. will be null and void as against purchasers, mortgagees, and creditors.

**ABOLITION OF IMPRISONMENT FOR DEBTS UNDER £20.**

*To the Editor of the Legal Observer.*

SIR,—Being but a young member of the profession, I should have felt some diffidence in intruding my opinions on this subject, had not you invited communications from all quarters as to the operation of the late act 7 & 8 Vict., cap. 96.

It is my opinion, and that of many old practitioners with whom I have had conversation on the subject, that the provisions of this statute respecting debts under 20l. are not at all beneficial either to debtor or creditor, but are a direct hardship to both. The prudent tradesman, reflecting on the late enactments, will refuse credit to his honest customer, even to the amount of a few pounds only, because of the bare chance that the customer may turn rogue; and thus he innocently injures himself to the amount for which he refuses credit, while the means of such customer may be so limited as

to prevent him from advancing ready money, except on very few occasions.

The hardship will be felt more strongly by tradesmen carrying on a small business, and by persons in receipt of wages payable at intervals, and who reside in furnished lodgings. If the former refuse credit, what must the latter do? Why, they must starve, I suppose, unless they can persuade tradesmen to trust to their honesty, for want of something more tangible.

Again, let us suppose that a dishonest individual succeeds in obtaining goods on credit from a tradesman, who is compassionate enough to supply them, notwithstanding the provisions of the late act, and after having run on an account to the amount of some fifteen or eighteen pounds, turns round upon his unfortunate benefactor, and flatly refuses to pay him. Where is the tradesman's remedy? The debtor may have no visible means of subsistence, may be living in lodgings, may not be possessed of anything which he can legally call his own, except the clothes upon his back;—why he may laugh at his creditor with impunity! And if the latter should unadvisedly commence an action for the recovery of his claim, the debtor may allow judgment to go by default, and the creditor finds himself, after incurring all the expenses of the action, exactly in the same position in which he stood before he adopted legal proceedings. The 59th section does certainly give a power of commitment for fraudulently contracting the debt to the judge who may try the cause; but what debtor would defend, when he may so easily escape payment without?

These remarks are founded upon facts. Several cases have come under my notice which show them to be true. And I am convinced that many other individuals, possessing greater facilities than I possess for observing the working of the act, could bear me out in what I have stated by adducing their own experience.

I, for one, am persuaded that no real good has ever been effected by the abolition of arrest on mesne process. If the grand object aimed at by the framers of the late act was to prevent persons from giving too much credit, that object would, I am sure, have been far more effectually attained by replacing the law of arrest in its original position. Z.

*Leeds, Nov. 10.*

[We shall be glad to hear from our correspondent on the other subject which he mentions.—Ed.]

**TRANSFER OF PROPERTY ACT.**

*To the Editor of the Legal Observer.*

SIR,—By the 9th section of the act to simplify the transfer of property, the *executor* or *administrator* of a deceased mortgagee is enabled to convey in certain cases the legal estate

previously vested in the heir or devisee of such mortgagee; and by the 18th section it is declared, that the act "shall commence and take effect from the 31st of December, 1844, and shall not extend to any deed, act, or thing executed or done, or any estate, right, or interest created before the 1st of January, 1845.

Let us suppose the following case to have occurred:—The owner of lands in mortgage has entered into a contract for sale, and out of the proceeds the mortgage is to be paid: the mortgagee being dead, and his heir-at-law, after diligent search, not being found, it has been proposed to wait until the act comes into operation, and the creditor, in lieu of the heir, shall be made a party to the conveyance, for the purpose of passing the legal estate.

Now, sir, I shall feel obliged if any of your correspondents will, through the medium of your Journal, favour me with their opinion, as to whether the act will assist in the above case, seeing that by the 9th section it is expressly declared, that its operation shall not extend to "any estate, right, or interest, created before the 1st of January, 1845," bearing in mind that by the operation of the contract an estate in equity is of course raised in favour of the purchaser.

I would merely throw out a hint for consideration, whether the restraining clause is only intended to operate as a declaration, rendering invalid any conveyance by the executors or administrators in the place of the heir, *previous to the act coming into operation*, and not to apply to any estate or interest created prior to and independent of the act, (such as the estate raised under the contract,) although the subsequent assistance of the act may be requisite to complete the title. A SUBSCRIBER.

Plymouth, Nov.

## CLASSICAL AND LEGAL STUDIES.

To the Editor of the Legal Observer.

SIR,—I stated in my letter which appeared in your journal of the 31st of August, that I had nothing then to remark on the subject of the necessity of a classical examination, and my observations were confined solely to the question of the utility of the study of the ancient languages.

If, however, I may obtain your permission so far to trespass on your columns, I shall be proud on another occasion to bring forward those convincing arguments, now so frequently under discussion, in favour of the establishment of a classical examination. But, as in my former letter, so I at present confine my observations to the question of the utility of classical reading.

It is admitted that such a preparatory course of study would cause us to be regarded as men of polite attainments; but it is argued that the knowledge thereby acquired could "never be of any earthly service to our clients."

In addition to the abstract assistance afforded by a power of being able properly to translate

and understand, in their primitive sense, those old maxims and first principles upon which all judicial decisions are based, and thus rightly to read and interpret the acts of parliament which so constantly vary the routine of practice, and upon which the solicitor is often suddenly called to act; and in addition to the facility gained in detecting, by sound logical argument based upon such knowledge, the wily subtleties of specious opponents, and thus separating truth from fallacy;—in addition to these and other advantages consequent upon an acquaintance with classical reading, does not *all* study, *all* exercise of our faculties, in proportion to its difficulty, increase our powers of perception, and enlarge the mind, by accustoming it to follow deep reasonings? And is the study of the ancient languages to be excluded from such general reading? Is there no difficulty there to surmount? Is there no assistance given in the explanation of terms used in all modern sciences? And is a client, I would ask, to be afraid of a man because he is well informed, and because his mind, by education, has raised him above ordinary mechanical practitioners? Does an acquaintance with one species of knowledge diminish our power of understanding another? or is a liberal education at war with honour and high principle?

The solicitor, the barrister, and the member of parliament, are, or are supposed to be, all lawyers, and to all and each of them the study of classical literature is pre-eminently useful. Surely it will not be argued that a knowledge of Roman or Grecian laws, and the operation of such, will weaken our powers of legislating. Can "the public" expect wise laws from a man who has not read deeply all systems of jurisprudence? Miserable, abortive, and ineffectual, must be the puny attempt of that man at framing laws, who has in his youth confined his attention to the perusal of mere practical works, and neglected a study of elementary principles and the spirit of universal legislation, past and present.

A. H.

SIR,—As it is evident from the letters in your periodical that a great variety of opinion exists among attorneys, as to the education most necessary and useful for them prior to their clerkships, and to maintain their position in society; perhaps you will allow me to state my views:—The difference among the writers appearing chiefly to depend upon the question of classical and non-classical education. My opinion is rather in favour of the latter, if I am compelled to make a choice in the argument, but if the former can be in the later years of education added to the latter, it doubtless tends to refine the mind, and in critical literary perception invigorate the intellectual powers.

Although I admit a knowledge of the classics implies in early life a liberal education, and that the student has not been compelled to exert his labour for his mere physical support, and

that, therefore, you have a presumptive proof of his competency to engage in a liberal profession, and that the mere gain of wealth will not alone be his guide, but higher and better motives will be concurrent, and although a classical education may be useful as one kind of means to sharpen and invigorate the intellect, and when all knowledge was concentrated in the ancient languages, and the great body of our legal authorities and documents written in Latin, it was essentially necessary that attorneys should be proficient therein, yet, now I consider this criterion alone is gone by, as the modern authorities in all branches of knowledge are in modern or existing languages, and especially as regards all legal documents in England of modern date, and therefore, this intimate knowledge of Latin is not so essential, and another criterion must be abolished; and therefore, if a student entering the profession is found to have a knowledge of mathematics, modern languages, history, geography, and a slight acquaintance with natural philosophy, he may fairly and justly be considered entitled to enter a liberal profession, although he is unacquainted with classical knowledge; for this non-classical education will not only have exercised and sharpened his mental powers, but it will at the same time have afforded knowledge applicable to the every day occurrences of existing life, and thus at one and the same time have made the cultivated and useful professional man, and adapted his moral feelings to things as they really exist, and not let them rest on past occurrences only; the weaknesses and vices of which are shrouded by time, and their advantages seen through the dim light of the same period, have a false glory around them.

As I submit, the practical business of an attorney is to have a correct knowledge of things as they are, and to be able to take the initiative on the spur of the moment in all kinds of business and with all classes of men, gentle or rude, rather than the deep learning and knowledge which is more particularly appropriate to those who tread the higher walks of the profession and devote their labours to one particular department, requiring time and deep consideration in each particular case.

A LAWYER.

#### OFFICIAL COPIES IN CHANCERY.

It appears that in the course of the hearing of a cause on Tuesday last, of "*Parsons v. Bignold*," an office copy was handed up to the Lord Chancellor, which had several important errors, and was written in a very slovenly manner. His Lordship having made inquiries, it turned out that some of the officers employ persons in the work of copying, who are paid at the rate of three farthings a folio. His Lordship expressed much indignation on hearing of this practice, declared it to be scandalous, and expressed his determination to see

that the work was well done, and that persons employed on it should receive such a fair remuneration for their labour as would repay them for care and attention. His Lordship further observed that the question was not one of profit to the officers. They derived nothing from the saving of expenses. It was a question between the persons employed and the public, for the money went into the suitors' fund, and the officers were paid not by fees, but by salaries. The cost of office copies had already been reduced, and his Lordship had it in contemplation to reduce the amount very speedily still further.

We have several times called attention to this subject, and believe that in some of the offices where the clerk is allowed three half pence per folio for copy money, a considerable annual profit is made. It has been objected also that where clerks have a direct interest in the office copies, the number of folios is not always accurately counted.

#### SUPERIOR COURTS.

Lord Chancellor.

[Reported by W. FINNELLY, Esq., Barrister at Law.]

LUNACY.—PETITION TO SUPERSEDE.—LUNATIC ABROAD.—COMMITTEE OF THE PERSON.—RESIDENCE OF THE LUNATIC.

[Concluded from p. 29, ante.]

Mr. Sombre, a short time before it became necessary to confine him, was in the habit of watching his wife in going to and returning from church. On one of these occasions, he called on Dr. Elliotson, told him that he wished him to procure him more of the society of his wife, and threatened to insult him, with a view to satisfaction by a duel. The doctor did, as any honourable professional gentleman would do under similar circumstances; he wrote to a friend of the family, stating what had occurred, and urging the necessity of placing Mr. Sombre under restraint. That gentleman went to Dr. Munro, and procured the necessary certificate for that purpose. Mrs. Sombre was pressed to sign it, but she refused: Mr. Sombre, she said, had passed a quieter night, and she would not be the means of placing him under restraint. So it went on for nearly a month. At great personal hazard, she persisted in refusing to sign the certificate, under the hope of some amelioration of the complaint; and when she did sign it, it was only in consequence of the most urgent remonstrance of her friends. So in the same manner when he was confined, she refused to sanction the execution of the commission, until Mr. Soloreli, his brother-in-law, insisted on it as absolutely necessary for the protection of the property. So far from being eager and anxious for a commission, she abstained from seeking it, at the hazard of her life: she said, in her

affidavit, she was fearful latterly of going to his dressing room, and therefore used to desire his valet to keep close to the door; but on one of these occasions she was alarmed by Mr. Sombre locking the door, and then looking at her with a grin, and then at a drawer which contained his pistols; and he continued looking this way for some minutes, when she opened the door suddenly and got out of the room: and she firmly believed it would have been impossible for her to remain so long with him if she had shown fear, which it was her study to avoid doing, in order to put off restraint to the last moment. She suffered all this hazard of her life from motives of the most praiseworthy character. What ground was there for attributing to her conduct any other motives? None whatsoever.

His lordship said he had now stated the history of Mr. Sombre, and the progress of his disorder up to the period of the confinement, showing that it went on increasing in intensity until restraint became absolutely necessary. In support of such a proceeding, medical gentlemen had been examined, men of the highest eminence, and their opinions fully proved its necessity. Sir James Clark, in his affidavit, said, that during a long conversation Mr. Sombre stated his conviction that Mrs. Sombre was unfaithful to him; and when asked what proofs he had of it, he said she had acknowledged it to him. On another occasion, when speaking of the conduct of his wife, he added, that the footman had admitted it, and that he had done so by standing on the stairs, a step lower down than Mr. Sombre. Mr. Sombre also told him that he was visited by two spirits, a good and an evil spirit, and that one of these desired him to throw Mrs. Sombre's ring into the fire. He said she had insulted him, and he talked of a challenge which he wished his wife to send to some one; and being asked how his wife insulted him, he said it was by her method of coming into the room. He (Sir J. Clark) was satisfied, from the improbability of some of the stories of Mr. Sombre with respect to his wife, and from the absurdity of others, that he must be insane. So said Dr. Conolly; so said Dr. Munro: they gave opinions, and gave the grounds on which these opinions were formed, and they came to the conclusion that Mr. Sombre was not of sound mind.

His lordship said that he had considered the case with reference to the character, the country, the habits, the manners, the feelings, and the education of Mr. Sombre, and he could not explain his conduct in any manner that would raise any doubt that he was labouring under insanity; in the language of Dr. Drever, he would say, that these delusions under which he was suffering were no more Asiatic than European.

Some observations had been made, in the argument, on the subject of money. Mr. Solorelli was supposed to have asserted that an attempt was made to bribe him. That was an

error on the part of Mr. Solorelli. Everybody knew, when a commission was sued out, that a scheme became necessary for the management of the property, and for the support of the lunatic. He had read the affidavit on that part of the case, and he believed that nothing had been done that was not strictly regular. Mr. Solorelli drew wrong inferences from what had passed, and his lordship was bound to say that he was satisfied.

His lordship now came to the commission. There had been a complaint that it was not properly worked. There was a full attendance of special jurymen. The commissioner was a man of great caution, and the case was opened by Mr. Calvert, in a speech remarkable for its temper, containing a plain statement of facts, without exaggeration. The jury questioned Mr. Sombre repeatedly, and before the evidence closed they said they were satisfied, and returned a verdict of unsound mind. But it was said Mr. Sombre did not know the object of the commission. Why, Sir James Clark explained it to him, Mr. Frere explained it to him; and if Mr. Sombre did not understand them, that of itself must have conveyed an impression that a mind so obtuse must have been unsound. But it was said he had no counsel. Why, he was pressed to employ counsel; and if Mr. Frere, after the positive rejection of any assistance, had employed counsel for his client, his lordship did not know but that might have been the ground of a charge of collusion.

Much had been said of the box of papers. It was charged that it had been taken from Mr. Sombre by a trick. But how could it be otherwise? They were obliged to resort to means which would avoid irritation; and it ought to be recollected, that they believed themselves to be dealing with an insane man, who might take an opportunity of destroying papers of importance to the interest of his property. There was, in his lordship's opinion, no imputation on any one with respect to that transaction. It was said, however, that Mr. Sombre ought to have had the use of the papers in the box. His lordship had read these papers, and he believed that if every paper in the box had been produced, the jury would have come to no other conclusion. It had been hinted that there was a conspiracy against Mr. Sombre. His lordship saw no trace of such a thing in any of the proceedings. The evidence of the many respectable and honourable persons produced at the inquisition, totally negated any such assumption.

The only remaining point was, whether there had been such an alteration in the mind of Mr. Sombre as to justify the court in superseding the commission. With respect to that question he must premise, that where a person had been ever pronounced lunatic, it was the principle of the court that the clearest case of restored intellect must be made out to justify the court in interfering to set aside the proceedings. That was the invariable principle, and if any of the delusions remained, the court always refused to



interfere. A gentleman might come and ask to have the commission superseded: it would be the duty of the court to see him, to converse with him: his lordship would ask him for the history of the disease, he would point out to him his delusions, he would ask him to explain by what means he got rid of them, whether they left him at once or by slow degrees; he would ask him if he was fully sensible that he had been labouring under delusions, and that he was equally sensible they had left him. That was the course by which the court would inform its conscience. But it would not do for three or four persons to say we are sensible this gentleman is no longer insane. The court must be satisfied from the mouth of the person himself that he was sensible that his delusions had left him.

Bearing this principle in mind, his lordship directed attention to what took place in Paris, after Mr. Sombre made his escape from Liverpool; and his lordship proceeded to examine with laborious and searching dissection the language of the eminent persons who had pronounced Mr. Sombre to be sane, and his lordship came to the conclusion from that examination, that if these gentlemen had possessed a knowledge of the facts they would have addressed very different inquiries to Mr. Sombre, and arrived at very different conclusions. Mr. Sombre had displayed great skill in avoiding questions, but when the French physicians said he gave a satisfactory explanation of his challenges, what would have been the result if they had known of the challenge to General Ventura, and questioned him on that or of the challenge to Sir F. Burdett, or Mr. Montgomery, or Sir Hume Campbell? Then again, when they stated that he entertained no hostile feelings to his wife, would not an acquaintance with the facts have elicited something more? What would have been the explanation of the conditions on which he said he would take back his wife—conditions which in his lordship's presence, Mr. Sombre had very recently admitted to have been those on which he might at one time have received her, although nothing now would induce him to receive her on any terms. (His lordship having read those conditions, which were not intelligible, proceeded). This paper was given to Sir J. Clarke by the lunatic, and not, as he alleged, taken from the table where it had been lying. Mr. Sombre had great skill and talent in concealing his delusions, and so far therefore from being satisfied by the examination in Paris, his lordship, from the manner in which it was conducted and the sort of information the examiners possessed, came to a conclusion the very opposite to theirs. Other gentlemen had been witnesses to the proper conduct of Mr. Sombre in Paris, but it was to be recollected that he was removed from the object of his delusion, and in a state of comparative calmness from the absence of excitement. But had they not the evidence of Mr. Quintin Dick and Mr. Okey, that when spoken to on the subject of his wife his delusions were as strong as ever, and his

language unabated in violence? His lordship now came to the period of his arrival in this country. It was the duty of the court to examine him; his lordship told him that two gentlemen would see him, and that he should also be present. But before he alluded to the result of that interview, he wished to remark that Sir James Clark, Dr. Conolly, and Dr. Munro, had all seen Mr. Sombre since his return, and they all concurred in opinion that he was still labouring under the same delusion. Other gentlemen, Dr. Paris, Mr. Lawrence, Dr. Copeland, Mr. King, all gentlemen of great eminence in the profession, had certainly expressed a somewhat different opinion, but it was impossible to take up these affidavits and not observe that they came to the same conclusion with great doubt and hesitation. But supposing it were otherwise, their evidence was not to be put in competition with that of others who spoke with clearness and precision of certain distinct facts so marked in their character, as to present a decided case of continued insanity. His lordship had already said he could not supersede the commission unless the recovery was clear and decided, and in itself free from all doubt; he must be satisfied of the fact, and not proceed on a mere balance of conflicting testimony. The case, therefore, did not rest here. He had seen Mr. Sombre, assisted by Dr. Southey and Dr. Bright, Dr. Munro also being present, and he had received a report which embodied much, although not the whole of what passed at the interview. It was faithful as far as it went, although not going perhaps to the full extent. That report was in these words:—

"My lord,—During our interview this morning with Mr. Sombre, we were unable to discover any material abatement of the extraordinary delusions, which have long had possession of his mind: he still persists in the unshaken belief of his wife's infidelity, as well before her marriage as since." (The report went on to state the grounds of that belief, and added)—"The delusions to which we have already adverted, appear to us to be so strong rivetted in the mind of Mr. Sombre, that we cannot regard him otherwise than as a person of unsound mind, whose case still requires the protection of the court." 'This was the report of the gentlemen in whose opinion the court had confidence.

His lordship at this point thought he might as well advert to a letter in which Mrs. Sombre offered to travel with her husband. That letter had been produced as a proof of inconsistency and insincerity, as if Mrs. Sombre did not herself believe her husband's insanity. His lordship did not think it deserved that imputation. Mrs. Sombre had heard of Mr. Sombre's being much more composed in Paris. What then could be more natural than that an affectionate wife should seek again her husband's society, under the hope that her presence might prove beneficial to him?

Having now disposed of all the questions which presented themselves to his mind, he

came to the consideration of the course which he ought to adopt with respect to the lunatic. In the evidence of Mr. Lawrence, a gentleman whose opinion was worthy of every respect, he found it stated that such was the condition of Mr. Sombre's mind, he might, if confined, become hopelessly insane, and even mad. It was impossible for the court to avoid noticing a suggestion of that kind, and as his lordship had come to the conclusion that the commission could not be superseded, before he made any final order he wished to suggest to Mr. Sombre's counsel that, if he was willing to go to Paris or the continent, in company with any gentleman in whom the court had confidence, no material impediment would arise to his doing so, and no objection would be made. He threw this out for consideration. On ordinary occasions the wife, where no reasonable opposition could be made, was always named committee of the person, but as there were exceptions to all these rules, his lordship thought this one of them, and that some other person ought to be associated with her, whose interference would be likely to produce less excitement on the mind of Mr. Sombre. He should make no order for a day or two, in order that these matters might be considered.

After some conversation between his lordship, Sir T. Wilde and Mr. Kelly, his lordship directed Mr. Sombre to be left in the enjoyment of the same liberty he then had, and his allowance of 100*l.* a week to be continued.\*

*In the matter of Dyce Sombre.* May, June, July and August, 1844.<sup>b</sup>

#### Holls Court.

[Reported by E. VANSITTART NEALE, Esq., Barrister at Law.]

#### PRACTICE—AMENDING BILL—13th & 19th ORDERS OF 1831.

*If a common order to amend is obtained after the time limited by the 13th order of 1831, the court will not restrain the right of the defendant to set it aside, because the error appears to have arisen from an accidental miscalculation. In calculating, the time allowed by the 19th order of 1831, the rule that one day is to be reckoned inclusive and the other exclusive in computations of time, is not applicable.*

*The time allowed by the 19th order of 1831 is to be reckoned in computing the period at which an answer is to be deemed sufficient, though no exceptions have been taken to it.*

This was a motion to discharge an order for amending a bill, on the ground of the time, within which, by the 13th order of 1831, it was required to be obtained, having expired before it was procured. It appeared that the answer was put in, and the time began to run, on the

3rd of November, 1843. The last seal after Michaelmas term was on the 18th of December; so that forty-seven days of the two months given by the 4th order for the delivery of exceptions, had elapsed before the vacation. Therefore, omitting the time between that seal and the beginning of Hilary term, according to the 19th order of 1831, the answer was deemed sufficient on the 19th of January: when the six weeks given by the 13th order for obtaining an order to amend, began to run. In general this period would not have expired till the 2nd of March; but, the present year being leap year, it came to an end on the 1st. On the 2nd the plaintiff obtained a common order to amend. In explanation of the delay in obtaining it, it was alleged, that the application had been put off to the last moment in consequence of negotiations pending for the termination of the suit. After the order had been obtained the period for making the amendment had been more than once enlarged by consent, so that the amendment was not made until the 26th of August last; but the defendants had guarded against the loss of their right to set aside the order, for the irregularity in the time of obtaining it, by an express stipulation on each of these occasions, that their assent should not be considered as a waiver of this right. And accordingly they now moved that the order might be discharged.

*Mr. Turner and Mr. Anderson* for the motion, relied upon the computation of time as above; and contended also that the time when the answer was to be deemed sufficient must, in the present case, be held to have expired on the 29th of December, and that the effect of the 19th order was only to enlarge the time for taking exceptions to the answer, if the plaintiff chose so to do; and not to postpone the time when the answer was to be deemed sufficient as a basis for subsequent computations, in cases where the plaintiff had declined to avail himself of the right to except. As analogous instances *Mr. Anderson* cited *Marriott v. Tarpley*, 8 Sim. 18; *Barnes v. Tweddle*, 10 Sim. 482; and *Goldsworthy v. Crosslake*, 2 Hare, 639.

*Mr. Bates* contra urged, that by the general rule of the court, in computing any period of time, one day was to be reckoned exclusive and the other inclusive; and that by applying this principle to the reckoning of the vacation, the period for obtaining the order would be extended to the 2nd of March. He relied also upon the subsequent lapses of time.

*Lord Langdale* said, that he thought the plaintiffs were entitled to discharge the order: no doubt the motion was one of very strict practice; and he thought it probable that the error in the time of obtaining the order, arose out of a mere oversight, forgetting that in the present year February had twenty-nine days. But the order was a mere common order to amend, and if not obtained within the appointed time the plaintiff had a right to have it set aside. And he considered that the time limited by the 13th order was expired when this

\* In a few days after this judgment, and before any order was made, Mr. Sombre again escaped to France; and remains there.

<sup>b</sup> At p. 35, *ante*, the last word of the 1st *Placium* in this case should be "Inquisition" read of "Infraction."

order was procured. The principle which had been relied upon to show that the time was not expired was not applicable. Certainly if you have a certain number of days given you between one event and another, you reckon the one event inclusively and the other exclusively in computing this time; but here the event had happened long before. The argument of acquiescence was met by the express stipulations on the part of the defendants that their subsequent conduct should not waive their right to avail themselves of the irregularity in obtaining the order; and therefore had no place in the present instance. On the other hand, he could not agree that the period allowed by the 19th order was to be excluded from the computation in this case. How could an answer be "deemed sufficient" while the right to except to it remained?

*Harrod v. Gibson.* Nov. 7th, 1844.

*Note.*—There appears to be an error in the marginal note to *Marriott v. Tarpley*, where it is stated, that "the intervals mentioned in the 19th order must be reckoned unless they occur in the first two months:" whereas the decision of the Vice-Chancellor of England was directly the reverse, as will appear by inspecting the report. The error is repeated in the judgment attributed to his Honour in *Barnes v. Tweddle*, where he is made to say, "What I decided in *Marriott v. Tarpley*, and *Attorney General v. Jones*, (5 Sim. 246,) was, that, in computing the time at the expiration of which an answer is to be deemed sufficient, the intervals mentioned in the 19th order are not to be reckoned; but that in computing the two months after the answer is to be deemed sufficient, those intervals are to be taken into account: a dictum inconsistent with the reports of those cases, and directly contrary to another dictum about them to be found in *Clare v. Clare*, 5 Jur. 1079, and to the decision of his Honour in that case.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

PRACTICE. — AMENDMENT OF DECREE. — CONSTRUCTION OF ORDER 45 OF 1828.

*The court has jurisdiction under the 45th order of 1828 to correct an error in a decree, although it relate to a matter of substance, and the decree had been made several years before and acted on.*

THIS was the petition of William Naish Alford, one of the defendants, who claimed a lien upon certain canal shares, and other property mentioned in the pleadings, praying that the decree made in the cause on the 1st of December 1837 might be corrected by substituting the word "sales" for the word "enquiries," on the ground of the latter word having been inserted by mistake under the following circumstances:—On the 4th of August 1837, it having been agreed that the cause

should be heard as a short cause, the following minutes were prepared by the plaintiff's solicitor, viz., "Inquire whether the defendant W. N. Alford has any and what lien, and in what manner and to what account in the canal shares admitted to be in his possession, or in any of the deeds and documents relating to the premises in the pleadings mentioned and sales above directed, without prejudice to such lien, if any." These minutes having been submitted to the counsel for the defendants, they were altered in the following manner:—"Inquire as to the amount of the lien of the defendant W. N. Alford, and in what manner for costs or monies advanced by him to the said Anthony Adam Askew, or Harriot Askew, or for the maintenance and support of the plaintiffs, or for payment of interest of any of the mortgages on the said estates, or any of them, or any of the canal shares, or the deeds, &c., or any monies received by him, and sales above directed to be without prejudice to such lien, if any." On the 1st of December 1837, the cause was heard as a short cause, and the decree was pronounced according to the proposed minutes as drawn and altered; but in drawing it up a variation was made by mistake from the minutes, the concluding part directing that the "enquiries" instead of the "sales" before referred to, should be without prejudice to the plaintiff's lien.

From the affidavit filed in support of the petition, it appeared that the petitioner, by a letter dated in May 1838, directed the attention of his solicitor to the mistake, and that they immediately saw the plaintiff's solicitors upon the subject, who promised to see the register and get the necessary alteration made. This, however, was omitted to be done, and the cause proceeded in the Master's office, and the Master made his report without any further notice of the error being taken; nor was the attention of the parties in any manner called to it until the cause came on for further directions in June last.

*Stuart and H. Clarke* for the petitioner, said, the case was clearly one for which it was the intention of the framers of 45th order to provide a remedy, for it was evident that all parties had agreed upon the decree in the terms now sought to be adopted, and it was merely an accidental slip of the register that rendered the present application necessary.

*Bethell, Campbell*, and *Batten*, contra, insisted that the 45th order was confined to mere clerical errors, or mistakes so plain and palpable upon the face of the decree, that there could not be the least doubt as to the intention of the court; and parties could not be allowed to make so important an alteration as to change one inquiry into another. Here the question was not one of omission but of addition, and the alteration was sought to be made after the decree had been acted upon for years. Besides which, many sales had taken place under the decree, and it was impossible to say how they might be affected if the prayer of this petition were granted.

The Vice-Chancellor said, he thought it a very clear case. He did not agree with the remark that the 45th order was intended to be confined to mere clerical errors, for it applied to two sets of circumstances, one clerical mistakes, the other mistakes or omissions occasioned by any accidental slip. In this case the minutes proposed by the plaintiff showed there had been an error, for according to those minutes the words were, "Inquiry whether there was any lien on the canal shares and on the deeds, and sales above directed to be without prejudice to such lien, if any." There being then something plain by which the decree could be put right according to the plaintiff's own view, there was no reason why the mistake should not be rectified. It appeared also, that the error was seen and pointed out by the petitioner, and his Honour had no doubt that it was the intention of the plaintiff's solicitor to rectify it, and that it was only in consequence of the circumstance having escaped them that the alteration was not made. Then it had been objected that in the state of facts carried in before the Master, the decree had been inserted in the form in which it was drawn up, and that the Master had also adopted the same form in his report without any notice being taken of it; but considering the great length of time since the cause was heard, it was not surprising that the error had been passed over. No order, however, had yet been made on further directions, and the language of the 45th order was, that mistakes or omissions might be corrected at any time before enrolment, and his Honour said he was, therefore, of opinion that both with reference to the time allowed, and with reference to the substance of the proposed correction, the case was embraced by the order, and the prayer of the petition must be granted.

His Honour at first directed that the costs of the application should be costs in the cause, but on the defendant's counsel objecting to this part of the order, on the ground of the correction of the mistake being for the petitioner's benefit, he said he should make no order as to costs.

*Askew v. Peddle.* Nov. 4, 1844.

**Queen's Bench Practice Court.**

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

**ATTORNEY.—ADMISSION.—TERM'S NOTICE.**

*The court granted leave to an attorney to be admitted without a full term's notice, when it was sworn that the applicant had since the time at which such notice could have been given, received an advantageous offer of partnership, which he would be unable to accept unless the application should be granted.*

*Martin*, on the 1st day of term moved that Mr. Charles Wyatt Estcourt should be at liberty to go before the examiners and be admitted an attorney of this court on the last day of the present term, in pursuance of the usual

written notices given on the 22nd of October last, under the following circumstances:—*The Reg. Gen. H. T.*, 6 W. 4, directs that the requisite notices should be delivered three days at the least before the commencement of the term next preceding that in which the party applying proposes to be admitted. This application had originally been made to *Rolfe*, B. at chambers, on the 22nd of October last, on the affidavit of the applicant, stating that he had been articled to a Mr. H. Sewell, and that his articles expired on the 6th Aug. 1844; that within the last few days an offer of partnership with a firm of respectability in the country had been made to him, but that he could not accept such offer, notwithstanding the same was highly advantageous to him, in consequence of having omitted to give the usual notices at the proper time, viz., previously to Trinity Term last, which he would not have failed to do had he then been aware that this offer of partnership would be made to him, and that unless the application should be granted he would lose the benefit of the offer. The learned judge made an order dated 22nd October, directing that the applicant should be at liberty to give the requisite notices for admission in the present term, in case this court should think fit to grant permission for that purpose. He submitted that under the present circumstances, the rule of court might be relaxed, and a term's notice dispensed with—a course which had been adopted on previous occasions. In *ex parte Hume*,<sup>a</sup> a party was admitted without a full term's notice, where it appeared that he had been prevented by illness from giving the notices in time. In the matter of *Hancock*,<sup>b</sup> similar permission was granted, when it was sworn to be essential to the applicant's interests in the profession, that he should sail for India before the regular time of notice would expire. There the application was made on the 2nd day of the term, on the last day of which he was ordered to be admitted. The facts above stated formed a sufficient excuse for not complying with the rule of court referred to.

*Pattesson, J.*—I see no reason why the application should not be granted.

Rule granted.

*In the matter of Estcourt.* Q. B. P. C. M. T., Nov. 2, 1844.

**Exchequer.**

Before Alderson, B.

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

**ABOLITION OF ARREST.—REFLEVIN.—COSTS OF ATTACHMENT.**

*Semble*, that the 7 & 8 Vict. c. 96, s. 57, (which abolishes arrest on final process for debts not exceeding twenty pounds,) does

<sup>a</sup> 4 Dowl. P. C. 83.

<sup>b</sup> 4 Ad. & Ell. 779.

not apply to an execution for the damages is an action of replevin, nor to the costs of an attachment issued out of the Court of Chancery.

Where the discharge of a prisoner under that act has been unduly obtained by the order of a judge, application to rescind the order must be made to the judge.

*Replevins* moved for a rule nisi, to set aside certain orders of Gurney, B., by which the defendant in this case was discharged out of custody, and that the defendant be again taken in execution. It appeared that the defendant had been in custody for the non-payment of the costs of two attachments issued out of the Court of Chancery: these costs did not amount to twenty pounds. The defendant was also in execution for the damages and costs in two actions of replevin. The amount of the damages were four guineas. Application was made to Gurney, B. at chambers, (without notice to the other side,) to discharge the defendant out of custody, under the 57th section of the 7 & 8 Vict. c. 96. The learned judge made the orders accordingly. It was now submitted that the 7 & 8 Vict. c. 96, did not apply to cases like the present, but only contemplated cases of debt. The 57th section, after reciting that "it is expedient to limit the present power of arrest upon final process," enacts, "that from and after the passing of this act, no person shall be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts, or in any county court, &c., in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of twenty pounds, exclusive of the costs recovered by such judgment." A judgment in replevin could not be considered a debt, and it was evident the statute did not apply to the costs of an attachment out of the Court of Chancery.

*Alderson, B.* I think the replevin cases are not within the act, but if the orders have been obtained upon an improper statement of the facts, the court has no jurisdiction, since the defendant was discharged by the order of a judge. The 58th section provides, that if any discharge shall have been unduly or fraudulently obtained, the prisoner shall, upon the same being made to appear to the satisfaction of the judge or court by whose order such prisoner shall have been so discharged, be liable to be again taken in execution, and remanded to his former custody, by an order of such judge or court. So that if the prisoner has been discharged by a judge, the application to rescind the order must be made to the same judge: the court has no jurisdiction unless the discharge has been ordered by the court. With respect to the costs of the attachments out of the Court of Chancery, an order of that court having now the effect of a judgment, it is a question, depending on the construction of the statute, whether those cases are within it. That is a point worthy of argument, and it would be better to move it before the full court.

The case was not moved in the full court, Gurney, B. having subsequently made orders to rescind his former orders.

*Goddard v. Neely*, Exchequer, Michaelmas Term, Nov. 12, 1844.

## THE EDITOR'S LETTER BOX.

A. being examined and admitted an attorney and solicitor in 1840, and having continued in the office of the gentleman with whom he served his articles, may take out his practising certificate, without the expense of readmission or a second examination. The judges have not fixed a limit as to the time within which an attorney should take out his first certificate in order to avoid an application to renew it. If several years elapsed, the registrar of attorneys would submit the matter to the court; but if the party continue in the profession no examination will be required.

The case on dilapidations cited at p. 23, ante, should be *Wise v. Metcalfe*, 10 Barn. & Cress, 299.

We understand that a bill has been prepared for compelling incumbents of livings to repair parsonage houses and premises.

We are not aware of the character of the institution mentioned by a correspondent at Gloucester, and recommend him to inquire of his agent before he acts. We cannot say more.

The case stated by a "Constant Reader" should be laid before an equity counsel; but as the facts are curious we have no objection to state them, though we can give no advice on the subject.

We are glad to receive the communication of "P. A. J.," and will avail ourselves of it. He will observe a case on the subject in the present number.

We return thanks to our learned friend "S. P."

"Phil. Jus." shall be attended to.

"A Subscriber" inquires whether the regulations under the Alien Act, 7 & 8 Vict. c. 66, sect. 11, have been made, and the fees under sect. 12 fixed. Can any of our readers give the information?

ERRATA, p. 32. The observations of *Pollock, C. B.*, beginning, "There would be no impropriety," &c., and ending, "which has caused a ruinous loss," should be in a parenthesis, the concluding authorities being cited by the counsel.

The communication from the "Metropolitan and Provincial Legal Association," arrived too late to be made available this week.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, NOVEMBER 23, 1844.

——— *Quæst magis ad nos*  
*Postulat, et massive-makum est, agitur.*

HORAT.

**THE ALTERATIONS MADE IN  
THE LAW OF JOINT STOCK  
COMPANIES.**

No. II.

NEW COMPANIES.

WE shall now consider the late acts with a view to the formation of future companies, which is the more important, as these provisions, so far as the privileges to be granted by them are concerned, affect also existing companies.

Before proceeding to make public, whether by way of prospectus or advertisement, any intention or proposal to form any company for any purpose within the meaning of the act, the promoters of the company are requested to make to the office prescribed for the Registration of joint stock companies, returns of the following particulars:—

1. The proposed name of the intended company.

2. The business of the company.

3. The names of its promoters, with their respective occupations, places of business, places of residence, and also the following particulars:—

4. The name of the street of the proposed place of business, and the number of the house.

5. The names of the members of the committee or other body acting in the formation of the company, their occupations and residences, with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter entered into with some one or

more persons as trustees for the company, to take one or more shares in the proposed undertaking, to be signed by such member or promoter.

6. The names of the officers of the company and their respective occupations, &c.

7. The names of the subscribers to the company, their respective occupations, &c.

8. A copy of every prospectus, handbill, &c., relative to the formation of the company; and

9. Until complete registration a return of any addition or change made in the above particulars.

On a registration of these particulars, the promoters of the company are to be entitled to a certificate of provisional registration. (s. 4.)

If the promoters of a company fail to register these particulars within one month after they are ascertained, they are to be liable to a penalty not exceeding 20*l.* (s. 5.) They may, however, be relieved from this penalty by appointing a solicitor to make the proper returns, and the penalty in that case falls on the solicitor, with a liability to be suspended or struck off the rolls. (s. 6.)

But no joint stock company hereafter to be formed is to act otherwise than provisionally until it shall have obtained a certificate of complete registration.

To entitle the company to this, there must be a deed or writing, under the hands and seals of the shareholders, and by such deed there must be appointed not less than three directors, and one or more auditors, and the deed must contain certain other particulars which are set forth in s. 7. This deed must also be certified by two

directors in the form required by the act. (s. 7.)

If the deed of settlement sent in is insufficient, the registrar is to notice its incompleteness, or if the provisions are inconsistent or repugnant with the provisions of the act, this is also to be noticed. (s. 8.)

But although a company is thus completely registered, the control of the Registration office is not to cease. Every new or supplementary deed of settlement is to be sent when any change takes place in any of the particulars required to be sent, such change is to be communicated to the office, (s. 10), and further, half-yearly returns are to be made of all changes and addition of members. (s. 11.)

Passing over some minor particulars as to these returns, we may notice, that any person may inspect the returns made at the office, and may require a copy or extract of any such return or deed on payment of certain fees. (s. 18.)

Every future company is to pay the following fees,—

For a certificate of provisional registration, 5*l*.

For a certificate of complete registration 5*l*., and one shilling additional in respect of every thousand pounds value of capital, as declared in the formation of the company.

For an annual certificate, 1*l*.

These are the present fees, but the Treasury may fix other fees, and it is to be observed that the Registration office is to be a self-supporting institution, and it is quite possible that there may be a surplus in the fund, which is to be carried to the consolidated fund. (s. 21.)

These are the liabilities of future companies. We next come to the powers and privileges which they are to enjoy, if they comply with the requisitions of the act.

On provisional registration the promoters are permitted for one twelvemonth,—

To assume the name of the company, but coupled with the words "registered provisionally;"

To open subscription lists;

To allot shares and receive deposits by way of earnest.

But not to make calls, nor to purchase, contract for, or hold lands, nor enter into contracts for services or stores, except such things as are absolutely necessary "for the establishing of the company" (s. 23); and if before a certificate of provisional registration any company shall

allot shares or make any contract, a penalty shall be incurred. (s. 24.)

At the expiration of the twelvemonth a new certificate must be taken out.

On complete registration, the company is incorporated and is to have the privileges of a corporated body, except that there is to be no restriction of liability in the shareholders; but otherwise the company is to have considerable and especial powers and privileges, which are set out in s. 25.

By s. 26, it is provided "That no shareholder of any joint stock company completely registered, shall be entitled to any dividend or any of the powers given to shareholders until he shall have executed the deed of settlement," and have paid up all instalments; but on so signing he shall be entitled to attend the general meetings and take part therein.

Further, it is provided as to any person entitled to any share in any company formed after 1st Nov. 1844, that until such company shall have obtained complete registration, and until such person has been duly registered as a shareholder, it shall not be lawful for such person to dispose of his share, and any contract for the same shall be void, and any person entering into it shall be liable to a penalty.

This last is a stringent provision, and will deserve the particular attention of our readers.

We shall in our next article refer to the clauses relating to the regulation of future companies.

## LOCAL COURTS IN FRANCE.

As the Local Court Bill will probably occupy the attention of parliament in the ensuing session, we think this a proper time to call attention to the administration of justice in France, in connexion with this subject. We extract from a work called "France. Her Governmental, Administrative, and Social Organisation, Exposed and Considered, in its Principles, in its Working, and in its Results."

"All the judges are appointed by the king; and almost the only qualification required is, to be from 22 to 30 years of age. To proceed with method, I will begin with the lowest class, the justices of the peace:

"Their powers are very similar to those of the county magistrates in England, with regard to matters of police; but they are, besides, judges in civil actions, and without appeal, when the amount of the sum claimed is not above 50 francs (2*l*.)

"There is a judge of the peace (*juge de paix*) for every canton, with a clerk (*greffier*), and one or two *huissiers* (*bailiffs*), according to the population. In some places the justices of the peace have a substitute (*suppléant du juge de paix*). The justices of the peace are chosen from amongst the inhabitants of the canton, as well as the *greffiers*. The former must be 30 years of age. They can be deprived of their emoluments, suspended, or dismissed, when they do not give satisfaction to the prefects, or to the minister.

"The emoluments of the justices of the peace in rural cantons are from 600 to 800 francs a year (24*l.* to 32*l.*); in towns, the salaries are from 800 to 2,500 francs, according to the population. The clerks' salaries in the rural cantons are about 12*l.* a year, and in the towns, from 12*l.* to 40*l.* The bailiffs (*huissiers*) receive no salaries from the government, but are entitled to some fees paid by the parties.

"The small amount of the salaries paid to those functionaries, particularly in rural cantons, must necessarily lead to the conclusion that such functions are not filled by men of education, and that those men must often be disposed to increase their income by acts of partiality. Thus, in this class of judges we have the first elements of injustice,—subserviency, ignorance, and corruption. We shall see that such is the case, also, in most of the other courts of justice.

"The number of the justices of the peace is 2,846, and their salaries amount to 2,327,400 francs. The salaries of an equal number of clerks amount to 775,800 francs; so that, with the bailiffs, the total of the *employés* in this jurisdiction is about 9,000, who cost the country 3,103,200 francs.

"The second jurisdiction in the French administration of justice consists of 'Courts of First Instance,' which decide on the cases of appeal from the justices of the peace, or on any other civil action brought before them. There is no appeal from their decisions, unless the claim is above 1,500 francs (60*l.*), or 50 francs (2*l.*) a year.

"There is a Court of First Instance in every *arrondissement*. These courts are composed of 4, 7, 8, 9, 10, or 12 judges, including the president, in proportion to the population, and a king's solicitor, with 1, 2, or 3 substitutes. There are 3 supplementary judges in the courts composed of 4 judges; and in the courts having from 7 to 12 judges, there are 4 supplementary judges. A *greffier* (remembrancer) is attached to every one of these courts.

"To be a judge, or a king's solicitor, one must be 25 years of age, a licentiate in law, and have attended the bar for 2 years. The substitute can be appointed at two-and-twenty.

"The emoluments of the presidents and the king's solicitors are, in proportion to the population and the importance of the towns, from 1,800 to 3,000 francs, except in Paris, where they have three times as much. It is the same with the judges, who are paid from 1,200 to 1,800 francs a year. The judges are *inamovi-*

*bles*, that is to say, they cannot be dismissed. The king's solicitors and his substitutes are subject to dismissal according to ministerial pleasure.

"The observations I made with regard to the justices of the peace, apply to the Courts of First Instance. No barrister of any talent and practice is desirous of a judgeship, the emoluments of which are considerably inferior to the profits of his profession, and in which he could display neither his legal acquirements nor his eloquence. The fact is, that most of these courts are recruited from the young advocates without any practice, who, two years after leaving the law schools, and obtaining their license, solicit the government to obtain an appointment of substitute to the king's solicitor, or of a supplementary judge. But the *sine qua non* to succeed, is to belong to the ministerial party, and to abjure all liberal opinions.

"One may easily conceive that courts of justice thus organized and composed do not enjoy any great consideration. A judge is but a poor personage, even in a country town. The president himself is not regarded when out of his judicial seat. The only member of the tribunal who has a sort of rank in society, is the *procureur de roi* (the king's solicitor), because this magistrate is the head of the police in the *arrondissement*, and has the power to arrest, imprison, and detain any citizen who has not the good fortune of agreeing with him in law or in politics. They are generally chosen on account of their violent party feelings, and, as they are subject to dismissal, are at all times ready to do anything that may be desired of them, and often overstep the commands of their master.

"The impartiality of the judges, even in civil cases, cannot be relied upon. Politics always interfere in some way. The judge in a small town, with a salary of 1,200 francs a-year, is desirous of being translated to another seat of 1,500 francs; then he wishes for another with 1,800 francs; and then he looks for a seat in a royal court; and all this cannot be obtained but by rendering good offices generally contrary to justice.

"There are 361 courts of first instance. The total number of the judges, king's solicitors, substitutes, remembrancers, is about 4,300, and the total of their emoluments is above 555,000 francs.

"There are 86 courts of assize in France. They are composed of two of the judges of the Court of First Instance of the town, presided over by a councillor of the royal court of the department. These courts have about 250 officers, and the salaries are 154,400 francs.

"The royal courts, courts of appeal from the Courts of First Instance, are composed of at least 24 judges, called *conseillers* (councillors), including the president. These courts are divided into 3 or more chambers, each chamber having a president, and the whole court a first president. There are an attorney-general, a substitute, and as many solicitors-general as there are chambers: a remembrancer



(*greffier*) in chief, and an assistant remembrancer, for every chamber. Councillors of the royal courts must be 37 years of age, and have attended the bar for two years. Attorneys-general must be above 30.

"The councillors of the royal courts are taken, in great part, from the courts of First Instance; but many among them are appointed without having passed through that ordeal, and by special favour of the minister, at the solicitation of ministerial deputies, and as a reward for their votes. So that the judges of these courts of appeal are either the former presidents or the king solicitors of the courts of First Instance, who have been promoted for their misdeeds; or young members of the bar, of good families, with a small income, and desirous of judicial honours without the trouble and *ennui* of preparing for their functions by exercising them in the humble capacity of judges of First Instance. The restoration had intended those judgeships for the sons of the nobility, who were, if I may so say, apprenticed, under the title of *conseillers auditeurs*. Since the resolution of July, this practice has been abandoned, and no new councillors' auditors have been appointed.

For many of the councillors, there is no chance of arriving at the presidency of a chamber, or the first presidency of the court; and therefore they might be inclined to become independent and impartial judges. To guard against that danger, the government has, in its usual way, established a graduation, not in the rank, but in the salaries of the councillors of the royal courts. In some, the councillors are paid 2,400 francs a-year; in others, 3,000 and 3,600 francs; so that a councillor of a royal court, as the Court of Pau, is induced to support any measure of any member of the government, by the hope of being removed to the Court of Toulouse, and then to the Royal Court of Lyons, and finally to that of Paris.

"There are 27 royal courts in France. The total number of the presidents, attorneys-general, solicitors-general, substitutes, councillors, remembrancers, and their assistants, is about 1,100, and the emoluments amount altogether to 43,000,000 francs a-year.

"At the head of all these courts is the Court of Cassation. This supreme court of appeal from the judgments of all the other courts, is composed of one first president, 3 presidents, and 45 councillors, an attorney-general, 6 solicitors-general, a chief remembrancer, and 4 sub-remembrancers. Total, 61 members, who receive altogether 793,300 francs a-year.

"This court, under Napoleon, was an assemblage of the most celebrated juriconsults of France; and it must be admitted, that political opinions never influenced his appointments; his enemies even were chosen by him for those eminent functions.

But, since the restoration, this court has been the refuge of all the political adherents of all the successive ministers who appointed

them; as if to remunerate their apostacy and their violence. It is now worse than it ever was. There are no other qualifications than the hatred of liberal principles, the prosecution of the public press, as attorney-general, and the support of any ministerial measures as a deputy. Isambert is the only member of that court, honest and consistent in his principles, and worthy of his situation, by his truly astonishing knowledge of the laws. But, had not that reward of his long services been granted a short time after the revolution of July, he would never have obtained the dignity from the government since the ministry of Dupont de l'Eure.

"The Court of Accounts, although a financial court, is under the control of the minister of justice. This court is composed of a first president, 3 presidents, 18 master councillors (*conseillers maîtres*), 18 reference councillors of the first class, and 62 reference councillors (*conseillers référendaires*) of the second class, with an attorney-general, a remembrancer, and 3 assistant remembrancers. These 107 officials cost the country 900,000 francs.

"The Council of State is the last of the institutions under the ministry of justice. This council is somewhat like the privy council in England, except that its members are subject to dismissal entirely at the pleasure of the ministry, and that they have a sort of judicial authority in all cases in which the state or the government's officials have any interest. Thus, if a prefect or sub-prefect, a mayor or any official, has, in the exercise of his functions, injured a citizen in his person or in his property, they cannot be sued in any court of law, without previously obtaining the authorisation of the council of state. In any lawsuit, when the communal or domanial administration, or any of the ministerial departments are interested, the courts of justice are declared incompetent, and the council of state alone adjudicates on the case. The ministers are then both judges and parties.

"The councillors of state are ordinary, extraordinary, and honorary; and the number is about 100. These, with about 80 masters of requests, in ordinary and extraordinary service, and about 80 auditors of the first and second classes, compose the council of state. Total, 260; and the cost, 468,000 francs.

"The central administration of this ministry, the *bureau*, costs 524,000 francs; the number of the *employés* being about 130.

"Let us now recapitulate the number of official agents of this administration, and the emoluments.

Justices of the Peace,	9,000	3,103,200
Courts of First Instance,	4,000	5,555,000
Royal Courts,	1,100	4,300,000
Court of Cassation,	61	793,300
Court of Accounts,	107	900,000
Council of State,	260	468,000
Ministerial Bureaux,	130	524,000

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Total, 14,958      15,643,500

"To these regular officials must be added a numerous class of professional men, who, although they are not paid by the treasury, are equally, if not more, dependent on the minister who appoints them. I now come to that class designated by the title of public and ministerial officials, and comprising the notaries, the solicitors (*avoués*), the appraisers, and the ushers.

"The transfer of property, the agreements between parties, marriage settlements, powers of attorney, any contract whatsoever, must be executed by notaries. Their number is determined by law, and by ministerial caprice. There cannot be fewer than 2, nor more than 5 notaries in every canton. In towns, where the population is above 100,000 inhabitants, there is, or may be, a notary for every 600.

"They are all appointed, but not paid, by the government. They give security, a very inefficient one, and are allowed to sell their offices, and to recommend their successors to the choice of the minister of justice, who can admit or reject them.

"The number of the notaries in France is about 7,300, who, with an equal number of head clerks, aspiring to the office of their employers, are interested in supporting the ministry, as the only means of profiting by the sale and purchase of their functions.

"The *avoués* (solicitors) practising in the Royal Courts and the Courts of First Instance, the ushers, and the appraisers, are similarly appointed; and their number being very limited, it is easy to conceive that they are the most subservient of all the ministerial officials.

"The number of the solicitors is	
about . . .	2,500
The ushers, . . .	5,500
The appraisers . . .	720
The notaries . . .	7,500

Total, 16,220

which number, added to the 14,058 judicial functionaries, makes the contingent of the ministry of justice to the administrative army amount to 30,278 *employés*.

## THE PROPERTY LAWYER.

### SALE BY INFANT.

IN *Simpson v. Jones*, 2 Russ. & M. 365, Sir John Leach, M. R., held, that a court of equity had no authority to give an infant a power of alienation even for his own benefit. See also *Taylor v. Phillips*, 2 Russ. & M. 365, and *Russell v. Russell*, 1 Molloy, 525. This point has recently come before Lord Langdale, M. R., who said, as to this "The court may order real estates vested in infants to be sold to satisfy the demands of creditors, or to give to *certain* *trust* the benefit to which they are entitled, but it has no authority to convert the real estate of infants into person-

alty, or to sell the real estate vested in an infant, upon the notion that the conversion or sale would be beneficial to the infant himself, or to himself and others \* \* \*

From the authorities which were referred to in the argument, it is apparent that if there be jurisdiction to sell, mere irregularities and errors in the proceedings will not invalidate the sale or prevent a good title from being made under the decree, and in this case I have not thought it necessary to consider several alleged errors in the mode of taking the account and calculating the claims on the estate. Such errors, even if proved, would not have availed the petitioner. But if there was no person who had a right to call upon the court to sell the estate for the satisfaction of a claim, then it is clear that in substance as well as in words and form, the sale was ordered only on the ground of its being beneficial to the infant to sell, and I think that this is not within the jurisdiction of the court." *Calvert v. Godfrey*, 6 Beav. 89.

The authorities alluded to in the argument, as showing that mere irregularity in the proceedings under the sale will not vitiate it, were *Lloyd v. Jones*, 9 Ves. 37; *Curtis v. Price*, 12 Ves. 89, and *Bennett v. Hamilly*, 2 Sch. & Lef. 566. See an earlier note of *Coleman v. Godfrey*, by our own reporter, 25 L. O. 143.

## EXPECTED NEW ORDERS IN CHANCERY.

WE understand that the long expected orders in chancery on pleadings and practice, are in a great state of forwardness, and may be expected to be issued before the next term.

## FURTHER REDUCTION OF FEES IN CHANCERY.

### ORDER OF COURT.

Wednesday 13th November 1844.

THE Right Honourable John Singleton, Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and consent of the Right Honourable Henry Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, Sir James Lewis Knight Bruce, and the Right Honourable the Vice-Chancellor, Sir James Wigram, do hereby, in pursuance of an act

of parliament passed in the fifth and sixth years of her present Majesty, intituled "An Act for abolishing certain Offices in the High Court of Chancery in England," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say :—

I. That for all office copies bespoke after the 14th day of November instant, *Clerks of Records and Writs* shall, in lieu and instead of the fee of sixpence per folio, receivable by him under the order of court, dated the 21st day of June last, receive and take the fee of *four pence* per folio, and no more.

II. That for all office copies bespoke after the 14th day of November inst., the *examiners* of the High Court of Chancery, and their clerks, shall, in lieu and instead of the fee of sixpence per folio, receivable by them under the order of court dated the 21st day of June last, receive and take the fee of *four pence* per folio, and no more.

That this order be entered with the registrar of the High Court of Chancery.

Signed LYNDHURST, C.

LANGDALE, M. R.

LANCELOT SHADWELL, V.C.E.

J. L. KNIGHT BRUCE, V. C.

JAMES WIGRAM, V. C.

## ADMISSION OF SOLICITORS.

### NOTICE.

THE Master of the Rolls has appointed Tuesday the 26th day of November inst., at a quarter before ten in the morning, at the Rolls' Court, Chancery Lane, for swearing in solicitors.

Every person desirous of being sworn and admitted on that day, must leave his common law admission or his certificate of practice for the current year at the Secretary's office, Rolls' Yard, Chancery Lane, on or before Monday the 25th inst., at three o'clock.

*Rolls, 15th November, 1844.*

## NOTICES OF NEW BOOKS.

*A Treatise on the Practice of the Court of Chancery, with an Appendix of Forms and Precedents of Costs, adapted to the last New Orders.* By JOHN SIDNEY SMITH, late of the Six Clerks' Office.

Third Edition, Revised and Enlarged. 2 vols. London: WM. BENNING & Co. 1844. pp. 851 and 850.

THIS is the third edition in less than ten years from the publication of Mr. Smith's original Treatise on the Practice of the Court of Chancery. He has incorporated into it all the alterations which have been effected, whether by statute or order of court, since the last edition. These changes have necessarily affected a large part of the former edition, and it seems well that Mr. Smith has lost no time in publishing this new edition, for the knowledge and means of information which he formerly possessed as one of the sworn clerks, would gradually become less important, on account of the new system which came into operation two years ago, and the new decisions which every term increase in number.

Mr. Smith observes in his preface, that the variations in practice have been so considerable, that scarcely a page of that portion of his previous edition which was practical has remained untouched, and it in adapting a work of this magnitude to existing rules of the court, some remnants of the old practice have escaped his attention, he requests the reader to bear in mind the difficulty of the undertaking.

We deem it right towards the author of a work of this magnitude, to state rather fully the scope of his labours, and to show the order in which he has dealt with the several parts of his subject.

In the *first book* he treats of the jurisdiction of the court; its judges and officers; solicitors and counsel; of the business of the court; motions, petitions, irregularity in proceedings and waiver, and affidavits.

Then of the *bill*; proceedings against *formal parties* from whom the plaintiff does not seek an appearance or answer; subpoena and letter missive; compelling *appearance*; proceedings to a decree *pro confesso*.

Appearance; time allowed to *answer*; compelling an answer. The manner in which a suit may be disposed of: demurrer; plea; answer; disclaimer; of advising on sufficiency of answer; insufficiency of an answer; amendment of a bill; dismissal of a bill; replication; subpoena to rejoin.

*Evidence*: interrogatories; examination of witnesses before the examiner; commission to examine witnesses; commission to examine witnesses abroad; compelling the attendance of a witness; demurrer to answer interrogatories; entering rules and passing and enlarging publication; privileges from arrest; suppression of deposition; re-examination of witnesses; examination to the competency and to the credit of a witness.

Setting down the cause; subpoena to hear judgment; preliminary accounts and inquiries; hearing the cause; proving documents *viva voce* at the hearing, &c.; decree nisi against an infant, and showing cause; minutes; decree; caveat against a decree; enforcing decree and orders; recovering costs.

It will thus be seen that the first book comprehends the usual and ordinary course of practice and proceedings in a chancery suit, from the bill to the final decree, together with such interlocutory proceedings as frequently or generally happen in the progress of a cause.

In the *second book*, the author proceeds to consider the following subjects:—

Cross bill; bill of interpleader; bill of partition; bill for the production of a deed; bill to perpetuate the testimony of witnesses; bill for a specific performance, and reference of title; bill of discovery and for commission to examine witnesses abroad; to examine witnesses *de bene esse*; abatement of a suit and bill of revivor; bill of foreclosure; bill to redeem.

Suing and defending in *forma pauperis*; security for costs; election to proceed either at law or in equity: reference where two suits are for the same purpose; scandal and impertinence; *ne exeat regno*; stop orders; injunction; distringas to restrain the transfer of stock and payment of dividends; receiver; appointment of guardian and allowance for maintenance; producing and leaving books, papers, &c. in the hands of the clerk of the records and writs; payment of money and transfer of stock into court; where money is ordered to be paid to a married woman, or she is ordered to execute a deed.

In his *third book* Mr. Smith treats of the enrolment of a decree or order. Proceedings to correct or vary a decree or a decretal order; rehearing and appeal; appeal to the Lords; bill of review; staying proceedings under a decree or a decretal order; proceedings by a party coming within the jurisdiction after decree; issues from the Court of Chancery; action at law; case at law. The latter part of the book then treats largely of the proceedings in the Master's office—the manner of taking accounts of interrogatories for the examination of a party; of the examination of a party in the Master's office; of the manner of taking evidence in the Master's office.

Then of general proceedings in the Master's office; sales before the Master; substituted purchasers; proceedings to compel the completion of a purchase; sale; sale by private contract; sale of real materials; sale of timber; sale of

chambers; purchase with trust property; of opening the biddings; and leases granted under the sanction of the Master.

Then of administration of assets; legacies and annuities; interest; inquiries before the Master; of the report; confirming report; exceptions to the Master's report; payment of money into court after the decree; further directions; award.

The appendix, containing forms of bills of costs, affidavits, examination, notices, petitions, &c. &c., together with the orders from 3rd April 1828.

## QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1844.

### I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any and what law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. One Anderson owes Baldwin and Crompton 100*l*. Baldwin and Crompton bring an action against him to recover it. Baldwin alone owes Anderson 100*l*.—Can Anderson set off the 100*l*. due to him from Baldwin as an answer to Baldwin and Crompton's action against him? And if not, why not?
6. Whilst A. is riding in his carriage, his coachman in driving knocks a man down, and injures him. Upon another occasion, when A. is not in the carriage, his coachman does the same thing.—Can the party injured bring an action of trespass against A. in both, or either, and which of these cases?
7. A servant's wages are payable quarterly, and have been paid to Lady Day, 1844. Between Lady Day and Midsummer, 1844, namely, on 1st of May, the servant misconducts himself, and for such misconduct is turned away by his master without warning.—Is the servant entitled *pro ratâ* to wages from Lady Day to May?
8. A traveller on his journey stops at an inn and desires to put up for the night; the landlord, although he has room in the house, refuses to receive him.—Is, or not, the landlord warranted in so doing?—and if not, has the traveller any and what remedy against the landlord in respect of such refusal?
9. Is there any separate jurisdiction belonging to each of the superior courts of common law not possessed by all the courts in common?

—If so, state what is the separate jurisdiction possessed by each court?

10. John Wilson sues Amelia Henderson for 20*l.* due to him for goods sold and delivered. Amelia appears and pleads coverture as an answer to the action.—Can she appear and plead by an attorney, or must she appear and plead in person?—and if the latter, state the reason why.

11. A warrant of attorney dated 21st of July, 1841, authorised judgment to be entered up “as of Trinity Term last, Michaelmas Term next, or of any subsequent term.” Judgment was signed in August, 1841.—Was this judgment regular?

12. A. enters into a bond in the penal sum of 1,000*l.* conditioned for payment of 500*l.* and interest; B. assigns the bond by deed in writing to C.; A. does not pay his bond, and it becomes necessary to sue him. In whose name should the action against A. be brought? and state the reason for the answer.

13. Is there any difference in the extent of the liability of an acceptor of a bill of exchange as between himself and third parties, and as between himself and the drawer?

14. A. brings an action against B. for recovery of a disputed debt; after action brought the cause is referred to an arbitrator by a judge's order; before award made A. wishes to revoke the arbitrator's authority. Is he at liberty to do so of his own will, or must he have any and what leave?

15. A. commits an assault upon B., and before action brought B. dies. Can B.'s executors or administrators sue A. for the recovery of damages in respect of the assault committed upon B.?

16. Assuming it to be necessary in an action brought to give evidence in letters patent under the great seal and the probate of a will, in what mode is the proof to be established?

17. Can a person interested in the result of a cause be examined as a witness on the hearing of the cause? and does it make any difference that the person to be examined is a party to the record?

18. A. is indebted to B. 15*l.* B. sues A. and recovers final judgment for 15*l.* debt, and 27*l.* costs. Has B. his election to issue execution against the goods and effects, or against the body of A., or is he limited to one only of such remedies, and to which?

19. Assuming an attorney for a plaintiff or defendant, by negligence or unskilfulness, so to misconduct his client's cause as that the client loses his cause. Has the client any remedy by action against the attorney? and if so, in what form of action must he sue him? and has he an election of more than one form of action?

### III.—CONVEYANCING.

20. Of what estate is a widow entitled to dower? and how is a purchaser (married before or after 1st of January, 1834) to prevent his widow from being so entitled?

21. What is the difference between a jointure and a dower? and how does each arise?

22. Who is the person entitled to any and what estate by the courtesy of England?

23. State the different species of property, and how are such properties legally classed?

24. How are such properties respectively alienated or transferred?

25. A. B. purchases freehold land of C. D., and such land is duly conveyed to A. B. in fee, and afterwards mines are discovered thereunder, in whom are such mines legally vested?

26. Suppose A. grants a piece of water to B., what is the extent of B.'s estate therein?

27. A. grants a lease to B. of certain hereditaments for lives. B. grants under-leases of those hereditaments, and afterwards is desirous to have a further or renewed lease from A. of the premises, how is that to be effected?

28. A. testator appoints C. and D. executors of his will. C. renounces probate, and D. proves the will alone, and dies in the lifetime of C. Who is the testator's personal representative?

29. State the general outline of the form of a conveyance of a fee simple estate.

30. Also the outline of the usual form of a lease by the freeholder of a house for a term of years.

31. If A. has a decree in equity against B. for the payment to him of a sum of money, how is that to be made a charge upon B.'s estate?

32. D. is a rector, and has sown part of the glebe with wheat, and dies before harvest time, to whom will this crop belong, and what is such crop denominated?

33. State in what case a leasee under a lease by a tenant for life would, and would not, be entitled to such a wheat crop, where such tenant for life die before the cutting of such crop, or where such lease expired by effluxion of time before that period.

34. State how an estate tail is to be converted into a fee simple estate, and by what parties.

### IV.—EQUITY, AND PRACTICE OF THE COURTS.

35. Can the prochein Amy of an infant sue *in forma pauperis*, or can any objection be sustained to such prochein Amy on the ground of his poverty?

36. Can a married woman in any and what case institute a suit as a *feme sole*?

37. Is the wife a necessary party to a suit in equity for recovery of property accruing to her after marriage, and is there any difference in the rules of law and equity in this respect?

38. Upon what principle is it decided whether a defence shall be made by plea or demurrer?

39. What is multifariousness? and what is the mode of defence to a bill objectionable on that ground?

40. Will a court of equity make any difference in its decision on an objection taken to a next friend of a married woman, or an infant, on the ground of the next friend being in indigent circumstances; and if so, why?

41. If a sole plaintiff becomes bankrupt, what proceedings is it necessary a defendant should take to free himself from the suit?

42. Can an alien in respect of any, and what interests, institute a suit in the English courts?

43. State the different disabilities by which a person may be hindered from suing in courts of equity, and the two distinguishing characters of these disabilities.

44. Is a bankrupt a necessary party to a bill filed against the assignees?

45. What is the effect of a plaintiff amending the original bill before answering a cross bill?

46. State what matters arising after filing a bill, can be introduced on the record by means of an amended bill?

47. Is the Attorney-General a necessary party to a suit, the subject matter of which is a legacy given to a charity already established?

48. In what case is the signature of counsel to an answer unnecessary?

49. State the different parts of a bill.

#### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. When was the last statute for amending the laws relating to bankrupts passed?

51. What description of persons are liable to be made bankrupts?

52. What is the amount of debt in respect of which a single creditor can petition to make his debtor a bankrupt?

53. What is the amount of debt in respect of which two or more creditors can petition to make the debtor a bankrupt?

54. What is the mode of proceeding to obtain a fiat?

55. What is done at the first and second meetings respectively under a fiat?

56. How are the creditor's assignees and the official assignees respectively appointed?

57. What are the respective duties of the creditor's assignee and the official assignee?

58. Can contingent debts not actually due at the time of the bankruptcy, in any, and if any, in what cases be proved under the fiat?

59. In whom is the power of granting or withholding a bankrupt's certificate of conformity vested?

60. What advantage does the bankrupt derive from obtaining his certificate?

61. What courts have jurisdiction in bankruptcy, and to what court is the ultimate appeal?

62. Is a bankrupt entitled by law to any, and if any, what allowance out of his estate?

63. In whom is the right of appointing the solicitor to carry on the proceedings under a bankruptcy vested?

64. Have the assignees of a bankrupt any power to surrender leasehold premises held by the bankrupt without the consent of the lessor?

#### VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. What is an indictment, and for what offences does it lie?

66. What is the distinction between *simple* and *compound* larceny?

67. Explain the nature of the proof required to maintain an indictment for robbery.

68. Is there any, and if any, what rule, as to the admissibility to bail in cases of felony?

69. What proof is requisite in order to excuse a person from punishment on the ground of insanity.

70. How, as respects evidence, and by what number of jurors, is an indictment found, in the first instance?

71. Is any, and if so, what protection afforded to a married woman who has committed a crime?

72. What is the distinction between an accessory *before*, and an accessory *after* the fact?

73. Is there any plea besides that of "not guilty" which a prisoner may plead to an indictment; and if so, what is such plea?

74. In what case are the dying declarations of a party deceased receivable in evidence?

75. What is piracy?

76. What is burglary, and how is it punishable when accompanied with and without violence?

77. What is homicide, and in what does it differ from murder?

78. What is the rule of law as to inferring a guilty intention in parties accused?

79. What is the law respecting the support and maintenance of bastard children, and how and by whom is the law administered?

#### BANKRUPTCY LAW.—ABOLITION OF ARREST.

[We entirely concur in the opinions expressed in the following letter, and hope the subject will be brought forward as suggested.]

To the Editor of the *Legal Observer*.

SIR,—Some active steps should most certainly be taken to alter the present mode of legislation. Many of the late statutes have the appearance of being drawn up and passed in the greatest possible hurry, without sufficient regard to the effect they may produce on the pre-existing law. The late Bankruptcy Act, 5 & 6 Vict. c. 122, is an example of what I have stated. Before this act had been in operation any great length of time, it was found necessary to alter it in several respects, and then the 7 & 8 Vict. c. 96, was passed; but still it is universally admitted that a change must be *again* made. There seems to be very little hope of this law being settled, since every session produces a new statute. Would it not be much better to make one decided change at once, than thus to try experiments, and go on legislating by halves and quarters?

There is one part of the latter act which I wish particularly to call your attention to, and that is, "the abolishment of imprisonment for debt." The effect which this has produced

appears to me, from my own observation, to be anything but beneficial to the community at large. There is a certain class of persons who are only to be deterred from running into debt by the fear of punishment, and this wholesome fear the late act has removed, for a man now has only to keep within a debt of 20*l.* to any one creditor, and he is safe; and even supposing his debt should exceed 20*l.*, and he is taken in execution, he then presents his petition to the court, and is forthwith, as a matter of course, discharged; and although a day is appointed for him to appear and undergo an examination, yet if there is anything in his affairs which he knows would not bear investigation, he avails himself of his release from prison to run away, and leave his creditors to do the best they can.

When the advocates for the abolishment of imprisonment for debt speak so strongly of the hardship of throwing a debtor into prison, they appear quite to overlook the *unfortunate creditors* of such a debtor, who are, in fact, the more deserving of pity of the two parties; for I think it will be found that, in nine cases out of ten, men get into difficulties through some fault of their own, either from fraud or extravagance. Such being the character and effects of the late Bankruptcy and Insolvency Acts, is it to be wondered at that the cries for reform are loud? And that a great change is required must be manifest to all. Yet, I trust nothing will be done precipitately, or without due consideration. The present law should be well understood, and the defects seen by those who frame the new, and the effects of the new should be well weighed before being allowed to come into operation, otherwise we shall have the same complaints and the same cries for reform at the end of next year as we have at this moment. As long as the present system of legislation continues, the profession *cannot* be expected to make themselves masters of the law.

I have thus addressed you on the present system of legislation, knowing how steadily you have always persevered in opposing it, and trust that before long the subject will be taken up by the *law societies* in earnest. They are the only means by which a change can be effected, as the efforts of *individuals* can have very little weight.

F. W. G.

## ABOLITION OF ARREST.—EXECUTION FOR COSTS.

[7 & 8 VIC. c. 96.]

There is one point among the many, in this act, which appears to be well worth considering; it is this: "Whether or not a plaintiff can be taken in execution for costs recovered by a defendant, on verdict, where such costs do not amount to 20*l.*?"

Let us suppose the costs taxed, and judgment signed for the amount, does this become a "judgment obtained in an action for the

recovery of a debt" within the meaning of the clause of this act of Parliament? for, although the plaintiff brought the action to recover a sum which he claimed as being due for a debt, yet the verdict having been given for the defendant, it would appear that there was, in fact, no debt due; and, taking this view of the subject, the act would not apply.

In considering the several sections of the act bearing upon this matter, we first look at section 57, which recites "that no person shall be taken in execution upon any judgment obtained in any of her Majesty's courts in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of 20*l.*, exclusive of the costs recovered by such judgment." Now, although the words of this section would, at first sight, appear to be rather ambiguous, yet on considering the latter part thereof, that "the sum recovered shall be *exclusive of costs*," it seems to be quite clear that *some* amount of debt must be recovered beyond costs; and it is the *plaintiff* only who can possibly recover any such amount; therefore we contend that this section does not apply to costs recovered by the defendant, when the plaintiff fails to establish his claim to the verdict.

Again, the 58th section recites, "that any person in execution at the time of the passing of the act upon any judgment obtained in any action for the recovery of any debt wherein the sum recovered shall not exceed 20*l.*, exclusive of costs, may apply for his discharge." It appears from the latter portion of these words that it must be a *defendant* in execution who can claim the benefit of this act, because it must be some person against whom a debt has been recovered (exclusive of costs) amounting to less than 20*l.* In the case of a plaintiff in execution for costs, no part of the judgment on which he was so taken in execution arose from a debt recovered in an action.

We have been informed that a plaintiff in execution for costs, amounting to 19*l.* odd, at the time of the passing of the act, applied to the judge at chambers for his discharge, and that he obtained an order for the same under this clause. We do not, however, vouch for the fact from personal knowledge, but from information received at the office of the sheriff of Middlesex by a correspondent, it appears that an action was brought by the defendant against the sheriff of Middlesex, wherein the defendant's costs were taxed at 19*l.* 19*s.* The information was so furnished to our correspondent on his calling at the sheriff's office in reference to a case of a similar nature, in which one of the officers had objected to take a plaintiff in execution on a *ca. sa.*, the defendant's costs having been taxed at less than 20*l.*; the officer having stated his objection to arise in consequence of the information he received of the foregoing decision, and in consequence of which he was advised that he could not take the plaintiff.

But there is one point in favour of a different view of the case. The defendant is entitled to

execution for his costs under the 4 J. 1, c. 3, s. 2; and 23 H. 8, c. 15, s. 1; and the late act says nothing in direct contravention of these acts, which the legislature certainly would have repealed or amended in case they intended to give to plaintiffs the protection which is now granted to defendants.

The 59th section enacts, that "the judge who tries the cause may (under certain circumstances) order that the *defendant* shall be taken in execution, although the debt recovered does not amount to 20*l.*," in the same manner as if this act had not been passed.

The 52nd section again refers to the *defendant*, and recites that "if it shall be made to appear to the judge that the *defendant* is unable to pay the debt or damages recovered, he may suspend the execution, &c., in his discretion." No such provisions are made for a "poor plaintiff;" indeed, the whole tenor of the act may be fairly construed as having been framed for the purpose of protecting the persons of poor *debtors* from arrest, who must, almost of necessity, be *defendants*; and it cannot, surely, whilst affording protection to the person of an unsuccessful defendant, at the same time shield from the "strong arm of the law" an unsuccessful plaintiff, who has brought an action which has turned out to be based on an unfounded, if not, a vexatious, claim. Besides, if under the provisions of a certain act of parliament (1 & 2 Vic. c. 110) a defendant is punished for vexatiously defending an action, why should a plaintiff be suffered to prosecute a vexatious claim, without being liable to pay the penalty attached to his failure.

Under all the circumstances, we see no reason to think that a plaintiff cannot be taken in execution for defendant's costs, where those costs amount to less than 20*l.*

On this point see the case of *Goddard v. Neely*, reported, p. 55, *ante*.

And by s. 13 it is enacted, that the Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trials to take place in the manner before directed, with regard to the first trial of such issue, and may, by order of the same court, direct such costs to be paid as to the said court shall seem fit upon any application for a new trial, or upon any new trial, or second, or other new trial, and may direct by whom, and to whom, and at what times, and in what manner, such costs shall be paid. And by s. 14, the granting, or refusing to grant, an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in council.

Upon this statute there have been several instances of motions for new trials made before the judge of the high Court of Admiralty. (See *the Harriot*, 1, Rob., Jun. Adm. Rep. 439.) In a very late case there was such a motion, and the case was argued by Dr. Addams and the Solicitor General on the one side, and Dr. — and Mr. Willes, of the common law bar, on the other; it was, I am informed, considered that barristers attended the Court of Admiralty, not of right, but by courtesy, but Dr. Lushington, the judge of the Admiralty, seemed to approve of this practice; indeed, it is agreeable to the practice in courts of equity, and I do not see how a court of Admiralty could act differently; it is clearly for the benefit of the suitor that such practice should be allowed. S. P.

[These cases in their passage through the common law court, must, we presume, be conducted by the practitioners of those courts, and not by proctors.—Ed.]

## NEW COMMON LAW BUSINESS.

The statute 3 & 4 Vict. c. 65, s. 11, (see Lord Tenterden on Shipping, by Mr. Sergeant Shée, Appendix clxii.) among other important alterations, which are well worthy of the attention of common lawyers, enacts, that in any contested suit depending in the Court of Admiralty, the court shall have power to direct a trial by jury of any issue, or issues, on any question, or questions of fact, arising in such suit; and that the substance and form of such issue, or issues, shall be specified by the judge of the said court at the time of directing the same, and if the parties differ in drawing such issue, or issues, it shall be referred to the judge of the said court to settle the same; and such trial shall be had before some judge of her Majesty's superior courts of common law at Westminster at the sittings of *nisi prius* in London or Middlesex, or before some judge of assize at *nisi prius*, as to the said court shall seem fit.

## CANVASSING FOR PROFESSIONAL BUSINESS.

It has always been considered as the settled rule of the profession, that public solicitorships are the only instances in which solicitors can become candidates for professional business. Where a vacancy has in such cases been declared, it is open to any solicitor to offer himself as a candidate; and these appointments are frequently accompanied by honour as well as emolument. But it has always been deemed disreputable to ask for the business of a private individual; and many practitioners have carried the usage so far, that when a client of a brother solicitor has come to them, they have endeavoured to restore the confidence which usually subsists between respectable men and their solicitors. It may happen, indeed, that a



person in private life, having few, if any, legal affairs to manage, may have no solicitor to whom he particularly looks; but even then, if he should find it necessary to institute or defend a suit, we never heard that he was subjected to the annoyance of being canvassed for a retainer. He is left to his own choice. He is either acquainted with some well-known practitioner, or he applies to a friend for a proper introduction.

In the case of the business of a country attorney, as every such attorney necessarily has a London agent, an application by a London attorney to conduct his agency, is still more objectionable.

We regret to hear, however, that a circular has been sent to country practitioners, by a young attorney in London, holding an official situation, which may be supposed to confer some degree of influence. This circular states "that he is open to receive agency business from country solicitors on the usual terms; that from his practical knowledge of the routine of the business of all the courts, due and prompt attention may be relied on; and stating that if they should be disengaged, or likely to be, he should feel obliged by their commands, or by a recommendation to any of their professional friends."

Having recently noticed the alleged breach by some members of the bar, of the rules long established for the preservation of its rank and honour, we have felt called upon to notice this infringement of the rules of the other branch of the profession, and hope, if possible, that some satisfactory explanation can be given on the subject.

In a profession of ten thousand men, it is, perhaps, too much to expect that all will adhere to rules established for the honour and advantage of the general body; and in this case, as in the instances affecting the bar, the over-crowded state of both departments may account for, though it cannot excuse or justify acts of misconduct to which "their poverty and not their will consents."

#### THE ACT TO SIMPLIFY THE TRANSFER OF PROPERTY.

*To the Editor of the Legal Observer.*

SIR,—In your number of the *Legal Observer* of the 14th September last, is contained a letter on this statute from "A Subscriber." Your correspondent appears to me to have formed an erroneous opinion on the 8th sec.

of that statute, which he appears to think will have little other effect than altering the name of contingent remainders, but which I conceive is fully operative to abrogate them, and in which opinion, on an attentive perusal of the 8th sec., your correspondent will, I think, concur, if not, I am open to a conviction of error, and shall be very happy of his assistance. The 8th sec. of the act provides, "That after the time at which this act shall come into operation, no estate in land shall be created by way of contingent remainder, but every estate which before that time would have taken effect as a contingent remainder, shall take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties as an executory devise." The hypothesis of your correspondent on this section is quite irrelevant; he gives the case of an estate in land being limited to A. for life, remainder to the heirs of B., and A. die during the lifetime of B., it is perfectly clear that this remainder could never take effect as a vested remainder, but then that has nothing to do with the case. The present subject is not whether the contingent remainder can ever become or take effect as a contingent remainder, but whether the estate created can ever take effect as a contingent remainder. On the creation of an estate three effects may be produced; first, the effect may be a contingent remainder; secondly, the contingency may in due time happen, and the effect be a vested remainder; lastly, the vested remainder may take effect in possession. If a contingent remainder is created, it must necessarily from its very creation take effect as a contingent remainder, but it is uncertain whether it may ever take effect as a vested remainder. The difficulty of "A Subscriber," is the narrow construction of the words "taking effect," he applying them evidently to the remainder vesting or taking effect in possession. I think the words of the statute, "every estate which before that time would have taken effect as a contingent remainder," are sufficiently clear.

G. M. A.

#### RESULT OF THE MICHAELMAS TERM EXAMINATION.

THE candidates entitled to be examined on Tuesday last the 19th November, were 134. It appears that three did not attend, 125 were passed, and 6 postponed. The number passed in last Trinity Term was 71; in Easter Term 92, and in Hilary Term 90; making a total in the present year of 378. In Michaelmas Term last year, the number was 106. That of the present term is unusually large, but still the average is considerably under 100 each term.

The Examiners for the present term were Master Turner, of the Court of Queen's Bench, with Mr. Bayley, Mr. Clarke, Mr. Clayton, and Mr. Pickering, members of the committee of the Incorporated Law Society of the United Kingdom.

# ATTORNEYS TO BE ADMITTED.

*Hilary Term, 1845.*

[Concluded from p. 47.]

## *Queen's Bench.*

*Clerks' Names and Residence.*

*To whom Articled, Assigned, &c.*

Hillersden, Frederick Edward, 2, Stafford Street, Bond Street . . . . .	William Thomas Langbourne, Gray's Inn Sqr.
Henderson, Alfred, Exeter . . . . .	James Terrell, Exeter
Haynes, Benjamin, 4, Grafton Street East, Fitzroy Square; Westbromwich . . . . .	Samuel Danks, Birmingham
Haedy, Christopher, the younger, 76, Great Russell Street . . . . .	James B. Brackenbury, Manchester
Heath, Allen Borman, 10, Lincoln's Inn Fields . . . . .	Daniel Boys, Ely Place
Hawkins, Christopher Stuart, 80, Lombard Street; and Modbury . . . . .	Henry Earle, Andover
Irving, James Corbet, Great George Street, Westminster; and Hemel Hempstead . . . . .	Walter Hughes, Bucklersbury
Jackson John Thomas Dodd, Wellington . . . . .	Servington Savery, and John Thomas Savery, Modbury
Johnstone, William Paul, 5, Cardigan Street, Manchester; and 92, Dummond Street . . . . .	David Graham Johnstone, Lothbury
James, John Gwynne, 6, Thavies Inn; and Hereford . . . . .	John Richards, the younger, Reading
Ives, James, 20, Loughborough Road, Brixton; and Camberwell . . . . .	William Burridge, Wellington
Knowles, Charles James, Shrewsbury . . . . .	John Owen, Manchester
Kirlew, Daniel, 19, Earl Street, Blackfriars . . . . .	Francis Lewis Bedenham, Hereford
Lampough, Robert Elliott, 41, Southampton Buildings; Langtoft; New Malton; and May's Buildings . . . . .	Herbert Sturmey, Willington Street
Lloyd, John Evan, 12, Guildford Street, East, Wilmington Square; and Claremont Sqr. . . . .	William Cooper, Shrewsbury
Leach, Francis, 26, Russell Square . . . . .	Henry Maltby, Old Broad Street
Langford, Henry, Westham, Sussex; and Tonbridge Wells . . . . .	Henry Smithson, New Malton
Last, Henry, 16, Old Square, Vernon Place; Hadleigh . . . . .	Charles Smithson, New Malton
Manners, William, Grantham; and Bedford Place . . . . .	Thomas Mitton, Southampton Buildings
Mackrell, William Thomas, 6, Johnson Street, Westminster . . . . .	Jonathan Rogers Powell, Haverfordwest
Moore, William, Bishopwearmouth . . . . .	William Henderson, Lancaster Place, Strand
Maberley, Thomas Henry, Colchester; and Pratt Street . . . . .	Robert Foreman, Tonbridge Wells
M'Leod, Bentley, Dacre Park, Lee; and De Beauvoix Square . . . . .	Isaac Last, Hadleigh
Merrifield, Thomas, Wainfleet; and Lincoln's Inn Fields . . . . .	Robert Cheere, King's Bench Walk
Marsh, Robert, 42, Chapel Street, Grosvenor Place; Ickles; and Bird's Buildings . . . . .	Robert Henry Johnson, Grantham
Martineau, Hubert, 1, Mitre Court Buildings; and Montague Place . . . . .	John Lawrens Bicknell, Abingdon Street
Mantell, Alexander Houston, High Wycombe; and Farringdon . . . . .	Anthony John Moore, Bishopwearmouth
Matthews, Benjamin, 5, Soley Terrace, Gloucester; and Amwell Street . . . . .	Thomas Maberley, Colchester
Milner, Christian Splidt, 47, Upper Seymour Street; and Exeter . . . . .	Henry Lowe, Southampton Buildings
Mackenzie, John Henry, Teignmouth; and Lamb's Conduit Street . . . . .	Thomas Seare Merrifield, Wainfleet
	William Fretwell Hoyle, Rotherham
	Philip Martineau, Montague Place
	William Makton, Carey Street
	John William Wall, Devizes
	Edwin Tilsley, Moreton
	William Richard Bishop, Exeter
	Charles Chappell Tozer, Teignmouth

- Mullett, Adolphus, Streatham Common ;  
     Doughty Street . . . . . Thomas Parker, St. Paul's Churchyard  
 Nicholls, Charles Kerry, formerly C. K. Whit-  
     aker, 38, Craven Street, Strand . . . . . Henry Rodolph Wigley, Picket Street  
 Nall, William, Shipston-upon-Stour . . . . . George Nall, Shipston-upon-Stour  
 Owen, Frederick, Worksop; and Gower Place  
 Ollard, William Ludlam, 69, Torrington  
     Square; Snow Hill; and Upper Street,  
     Islington . . . . . Hanalip Palmer, Upwell  
 Owen, Arthur Watkin, 12, Wakefield Street;  
     Mold; and Wilmot Street . . . . . Copner Oldfield, Holywell  
     Hugh Roberts, Mold  
 Pemberton, Charles, Liverpool . . . . . John Coruthwaite, Liverpool  
 Pinniger, John Alexander Mainly, Chippen-  
     ham; and Tonbridge Place . . . . . Broome Pinniger, Chippenham  
     H. S. Westmacott, Gray's Inn Square  
 Paine, William Stephen, 45, York Road,  
     Lambeth . . . . . William Stevens, Frederick's Place  
     Thomas Maples, Frederick's Place  
 Perkins, Richard, the younger, 15, Regent  
     Square . . . . . Richard Perkins, the Elder, Gray's Inn Square  
 Philbrick, George Edward, 55, Amwell Street;  
     Malvern Terrace; and Colchester . . . . . Frederick B. Philbrick, Colchester  
 Piggot, Horatio, 3, Garden Place, Lincoln's  
     Inn Fields; and Colchester . . . . . Edward Daniell, Colchester  
 Pennington, James Masterson, 14, Gower  
     Street, Bedford Square; and Bristol . . . . . Richard Armistead, Whitehaven  
     Charles Bevan, Bristol  
 Pearce, William, Dorchester; and Lincoln's  
     Inn Fields . . . . . Thomas Coombs, the Elder, Dorchester  
 Rutherford, John, 6, St. Thomas's Square,  
     Hackney . . . . . George Rutherford, Lombard Street  
 Rawlins, David Archibald Dixon, Market  
     Harborough; and Leicester . . . . . Samuel Muncckley South, Market Harborough  
     Thomas Ingram, Leicester and Market Har-  
     borough  
     Thomas Ingram, junr., Leicester and Market  
     Harborough  
 Randles, Edward, St. Olive's Vicarage, Old  
     Jewry; and Dudley . . . . . William Robinson, Dudley  
     J. W. Freshfield, junr., New Bank Buildings  
 Rhys, Charles Thomas, 16, Featherstone  
     Buildings; and Neath . . . . . Alexander Cuthbertson, Neath  
 Raven, Samuel, junr., 6, Northampton Place,  
     Islington; New North Road, Islington . . . . . Rowland Wilks, Finsbury Place  
     David M. Johnson, Moorgate Street  
 Raphael, Lewis, junr., 27, Great James Street . . . . . Rowland Nevitt Bennett, Lincoln's Inn  
 Richardson, Philetus, 9, South Place, Albion  
     Road, Stoke Newington . . . . . Frederick Hasley Janson, Basinghall Street  
 Rudd, John, Yarm; Grove Street; and  
     Alington Street . . . . . William Fawcett, Yarm  
     Henry Hill, Verulam Buildings  
 Buch, Adam Joseph, 6, University Street,  
     Tottenham Court Road; Newington next  
     Sittingbourne . . . . . John Monckton, Maidstone  
 Smith, Frederick, Crediton . . . . . John George Smith, Crediton  
     Francis E. Smith, Crediton  
 Shoosmith, William, 6, Gt. Dover Street, Lam-  
     beth; Northampton . . . . . John Heusman, Northampton  
 Sparham, Henry Mills, 59, Burton Crescent;  
     and 45, Essex Street . . . . . Henry Rogers, Thetford  
     Thomas C. Kenyon, Brandon  
     Thomas Barrett, Lincoln's Inn Fields  
 Surtees, Alfred Wright, 40, St. James's Place  
 Stockley, Richard, Stratford; and Lea Bridge  
     Michael Clayton, New Square  
     Joseph Smith, Coleman Street  
     Benjamin Smedley, New Inn  
     Edwin Smith, Bridge Street, Blackfriars  
     Charles E. Parker, Princes Street, Spitalfields  
     William Smith Hemel Hempstead  
     John Philip Dyott, Lichfield  
     Anthony Blyth, Burnham  
     James Crossley, Manchester  
 Smith, Montague George, Peter's Port, Litch-  
     field; Burnham; Bedford Row; and  
     Blackfriar's Road . . . . . Thomas Thorpe, Alnwick  
 Sudlow, John, the younger, Manchester . . . . . Sommersby Edwards, Long Buckly  
 Smith, Robert Edwin, 35, Marchmont Street,  
     Brunswick Square; and Alnwick . . . . . Thomas Ingram, Leicester  
 Spooner, Thomas, 6, Wells Street, Gray's Inn  
     Road; Leicester; and Munster Street . . . . . John William James Dawson, Charlotte Street,  
     Blossbury  
 Swainson, William, 18, Apollo Buildings,  
     East Street, Walworth . . . . .

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|--|---|
| Stevens, Richard, Loudon Place, Brixton ;<br>and Witham . . . . .  | Edward Wilson Banks, Witham                           |
| Stevenson, George, 12, Marlborough Place,<br>Walworth Road ; and Leicester . . . . .                                 | Richard Toller, Leicester                             |
| Shekell, John Hilton, 15, Wells Street, Gray's<br>Inn Road ; and Gower Place . . . . .                               | Edmund Wells Oldaker, Pershore                        |
| Salmon, George, Burton Crescent ; Russell<br>Place ; Upper Wharton Street . . . . .                                  | William Wise, Rugby                                   |
| Travers, William Thomas Locke, Hythe . . . . .   | Frederick Dowding, Bath                               |
|  | Ralph Thomas Brockman, Folkestone                     |
|  | Edward Watts, Hythe                                   |
| Tucker, Andrew, the younger, Bellair House,<br>near Charmouth . . . . .  | John Henry Benbow, Stone Buildings                    |
| Thurston, Obed Edward, Thornbury ; 2, Fre-<br>derick's Place, Gray's Inn Road . . . . .                              | Thomas Crossman, Thornbury                            |
| Tudge, John Williams, 2, Cloudealey Street,<br>Cloudealey Square ; Presteign ; and High<br>Street, Aldgate . . . . . | Thomas King Stephens, Presteign                       |
| Thompson, John Mawlen, 5, White Hart Court   | John Atkins, White Hart Court                         |
| Vaughan, Samuel Bradford, 8, Symond's<br>Inn ; Dyer's Buildings . . . . .  | Frederick John Manning, Craven St., Strand            |
| Van Sommer, James, 2, Chatham Place,<br>Hackney . . . . .  | Robert Riddell Bayley, Basinghall Street              |
| Wake, Bernard, Osgathorpe House, Sheffield   | Bernard John Wake, Sheffield                          |
|  | William Wake, Sheffield                               |
| Whitaker, Charles Kerry, now Nicholls, Charles<br>Kerry, 38, Craven Street, Strand . . . . .                         | Henry Rodolph Wigley, Pickett Street                  |
| Wilson, Charles, 15, Tavistock Place ; Man-<br>chester ; and Connaught Terrace . . . . .                             | Henry Charkwood, Manchester                           |
| Ward, Charles Edward, Upper Charlotte St.,<br>Fitzroy Square . . . . .   | Francis Ridout Ward, Bristol                          |
| Welchman, Charles John, 29, Lincoln's Inn<br>Fields ; and Southam . . . . .  | Robert Frederick Welchman, Southam                    |
| Webb, Henry, 39, Tavistock Street, Covent<br>Garden . . . . .  | Robert Hinde, Milton next Sittingbourne               |
| Waller, Thomas Henry, 188, Sloane Street,<br>Knightsbridge . . . . .   | John Hinde, Milton next Sittingbourne                 |
| Yatman, Herbert George, 18, Norfolk Cres-<br>cent, Hyde Park . . . . .   | William Saltwell, Charlton Chambers, Regent<br>Street |
| Yorke, Henry, Oundle ; and 6, Myddleton<br>Square . . . . .  | Charles Druce, the younger, Billiter Square           |
|  | George Croxton, Oundle                                |
|  | Henley Smith, Warnford Court                          |

*To be added to the List pursuant to Judges' Orders.*

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|--|--|
| Aldridge, Walter William, Lawn Place, Shep-<br>herd's Bush . . . . .   | Joseph Warner Bromley, South Square, Gray's<br>Inn |
| Buck, Charles, 7, Great Ormond Street ; and<br>New Ormond Street . . . . .   | Thomas Swainson, Lancaster                         |
| Carnochan, Thomas Harsley, 36, Bedford<br>Row ; and Bawtry . . . . .   | Frederick Hawksley Cartwright, Bawtry              |
| Gery, Thomas Lewis, Daventry . . . . .   | Charles Bell, Bedford Row                          |
| Hutchinson, Bury Victor, 26, Portland Ter-<br>race, Regent's Park ; Albemarle Street ;<br>and Wigmore Street . . . . .           | Thomas Orton Grey, Daventry                        |
| Hayward, Charles Francis, 2, Adelaide Place,<br>City ; and Dartford . . . . .  | George Basham, Staple Inn                          |
| Robert Charles Kentish, Newport, Essex ; 11,<br>Hunter Street, Brunswick Square ; War-<br>wick Court, Gray's Inn Place . . . . . | John Hayward, Dartford                             |
| Reeve, Richard Henry, 106, Great Russell<br>Street ; Lowestoft ; and Southampton Row   | Thos. Probert, Saffron Walden ; and Newport        |
|  | Edward Norton, Lowestoft                           |

*Put through the Door of the Masters' Office, Date not known.*

- |   |                               |
|---|-------------------------------|
| William, 23, Bayham Terrace, Cam-<br>den Town . . . . . | George Trehwett, Cook's Court |
|   | John Bell, Vine Street        |
|   | Alfred Goddard, King Street   |

## SUPERIOR COURTS.

## Rolls Court.

[Reported by E. VANSITTART NEALE, Esq., Barrister at Law.]

## SPECIFIC PERFORMANCE. — CONDITION. — SOLICITOR. — COMPENSATION.

*A purchaser offered to accept a certain lot of land, which proved to be smaller than had been represented in the conditions of sale, if the vendor's solicitor would then make a declaration as to the title. This the solicitor said he could not do until he had examined a certain document: when he had made this examination, he offered to make the required declaration. Held, that the plaintiff might, nevertheless, refuse to accept the lot.*

THE plaintiff in this case had bought at an auction, a lot described in the particulars of sale as consisting of 8 acres more or less, of which 7 acres were freehold and 1 acre copyhold. On measurement it was found that the lot consisted only of 6½ acres: the plaintiff, therefore, brought his bill for compensation. The defence set up was, that the plaintiff had agreed to take the lot as it was: and it appeared that he offered to do so if the defendant's solicitor would make a declaration that the whole lot was freehold; the land had been allotted under an award, and the solicitor declined making any such declaration until he should have an opportunity of inspecting the award. When he had done so he declared his readiness to make the required declaration, but the plaintiff then refused to accept the lot, unless a copy of the award should be set out at the defendant's expense in the deed of conveyance, which the defendant declined to do.

Mr. Turner and Mr. Bloom, for the plaintiff.

Mr. Kindersley and Mr. Glasse, for the defence.

Lord Langdale said, here an offer was made by the plaintiff, which was not accepted, for his offer was to accept the land if the defendant's solicitor would then make a certain declaration, which he did not make. When the declaration was made its acceptance was accompanied by conditions, which were not complied with; there must, therefore, be the usual reference.

*Malden v. Tyson.* July 18, 1844.

## Vice-Chancellor Wigram.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

## PRACTICE.—PRODUCTION OF DOCUMENTS.—PRIVILEGED COMMUNICATIONS.—COUNSEL'S OPINION.

*On motion for the production of an opinion, taken fifteen years ago by cestui que trust, after a dispute had arisen between him and his trustee, which was now the subject of an original and cross suit, it being admitted by the answer of the cestui que trust that such*

*opinion was in his possession; the court held it to be privileged.*

Mr. Miller moved for the production of certain papers and documents admitted by the schedule to the defendant's answer to be in his possession, and, amongst others, for the production of an opinion of the late Mr. Bell, taken about fifteen years ago. The original bill had been filed by a *cestui que trust*, for the purpose of setting aside the sale of a trust estate to a trustee, thirty years since. The defence to this bill was, that the defendant, having full knowledge of his rights, acquiesced in the sale. The cross bill was filed by the trustee for discovery. The defendant admitted that he had taken the opinion of counsel, and that such opinion came into his possession. The case and the opinion were set out in the cross bill, and the defendant declined to produce the latter. It was insisted that the case and opinion having been prepared and taken in a matter in which both *cestui que trust* and trustee were interested, and at so distant a period as fifteen years ago, they must now be considered as forming a part of the title of both parties. *Newton v. Baresford*, 1 You. 377; *Richards v. Jackson*, 18 Ves. 474; *Radcliffe v. Furman*, 2 Bro. P. C. 514.

Mr. Shebbare, contra.—The Master had decided that the opinion need not be produced, and this was not excepted to. An opinion of counsel had, according to all the authorities, been excepted from the general rule as to the production of documents. The plaintiff in the cross suit must have obtained a copy of the case and opinion improperly. They were both prepared and taken adversely to him by the *cestui que trust*, with the view of impeaching the sale. In *Radcliffe v. Furman*, in the House of Lords, the distinction was taken between a case and an opinion. In *Preston v. Carr*, 1 Y. & J. 175, it was again recognised; the court, however, saying, that if the opinion upon the first case were embodied in a second case, that then it might be produced; otherwise, it was protected. *Nias v. the Northern and Eastern Railway Company*, 2 Keen. 76; *Lord Walsingham v. Goodricke*, 3 Hare, 122; *Greenlaw v. King*, 1 Beav. 140.

His Honour said he had repeatedly ordered opinions to be produced where the trustee had taken them on behalf of the *cestui que trust*, and they had been paid for out of the trust estate, but it was understood that mere advice given to a party on his own behalf, adversely to another, was protected. The case might be important, because it might admit a certain state of facts. He wished to read the pleadings, and to inquire as to the case of *Flight v. Robinson*, before finally disposing of the motion.

Nov. 6.—Sir James Wigram, V. C., now delivered judgment:—This was a motion by the plaintiffs in a cross suit for the production of documents contained in the schedule to the answer, and admitted to be relevant to the matters mentioned in the bill. Amongst other documents, was a case which had been sub-

Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

AGREEMENT.—CRIMINAL LAW.

*Where a proceeding by way of indictment relates wholly to a matter for which the party prosecuting could also have a civil remedy, an agreement to compromise such an indictment is not illegal.*

*But where the proceeding is one where the party prosecuting would have no such right, or where the indictment is in respect of two offences; one of which is wholly of a public criminal nature, an agreement to compromise is illegal, and a promise made in consideration of such agreement cannot be made the foundation of an action.*

*Where, therefore, an indictment had been brought for a riot and assault, inasmuch as the charge of riot was altogether one of a public nature, an agreement to compromise the indictment was held invalid.*

THIS was an action of assumpsit. The declaration in substance averred that the plaintiff had brought an action against one George Emmett, obtained judgment, and that a writ of *feri facias* issued, under which his goods had been seized. That Emmett, thereupon, brought an action of trespass against the sheriff for executing the writ of *feri facias*. That plaintiff then caused Emmett to be indicted for a misdemeanor, in riotously obstructing the sheriff's officers in the execution of their duty. That when the indictment came on for trial, all further proceedings were stayed with the consent of the judge, upon the defendant giving the following undertaking. "In consideration of the prosecutors of the indictment against G. Emmett and others not proceeding further in such indictment, and the sheriff of Yorkshire withdrawing from the possession of the crops and effects of W. Emmett, on the farm of South Milford, under an execution against G. Emmett, at the suit of Andrew Keogh: We undertake to pay to A. Keogh, on or before the last day of Michaelmas Term next, the balance of the principal money and costs remaining unsatisfied in the original cause of *Keogh v. G. Emmett*, and the balance of costs and charges incurred in or about the execution of the writ *feri facias* issued in the same cause, and also to pay the costs of the defendants, as between attorney and client in the suit of *Emmett v. Wentworth and another*, and also the costs as between attorney and client of the prosecution, instituted against G. Emmett and others for riot and assault.

(Signed) "GEORGE LEMAN."  
"THOMAS PEARSON."

Breach, that the defendants had disregarded their said promise, and refused to pay the sum of 84*l.* 12*s.* which remains due and unsatisfied, for the said balance of the principal money and costs so recovered by the plaintiff against G. Emmett, and also the sum of 63*l.* 11*s.* 10*d.*, the costs incurred by the plaintiff.

mitted by the defendant to his counsel and the opinion thereupon. The defendant has submitted to produce the case, but has resisted the production of the opinion. The only question upon which I was called to exercise my judgment was, whether I should order the opinion to be produced. Attending to the admission in the answer, and to the issue in the cause, there can be no doubt that the opinion may be material to the plaintiff's case. The plaintiff, therefore, will, *prima facie*, upon general principle, be entitled to have it produced, unless the defendant has shown by his answer that the document is privileged. If his answer shows that, it will become unnecessary to consider whether the document might be material or not to the plaintiff's case. It was stated by Mr. Miller, as I understood his argument, that Lord Langdale had lately decided a case of *Flight v. Robinson*,<sup>a</sup> by the report of which it appeared that his lordship considered the opinions of counsel as not entitled to privilege although it appeared that they might be material to the plaintiff's case. Upon referring to that case, however, it appears that Lord Langdale distinctly recognises the authority of the cases which determine that such documents generally are privileged; and that, afterwards in the order he made for the production of the documents, he carefully excepted those which fell within the scope of the decided cases establishing that principle. That case leaves the authorities precisely where they stood before. In order to avoid a repetition of my own opinion upon the subject, I shall refer only to the case of *Lord Walsingham v. Goodricke*,<sup>b</sup> in which I had occasion fully to consider the subject. I remain of the opinion I then expressed, that whilst the state of the law renders it impossible for parties to be their own lawyer, and to act without professional advice, it is indispensably necessary that the privilege now conceded to professional communications should be maintained, at least to the extent to which it is established. I have looked into the bill and answer in these suits, and by the latter it appears that the opinion in question was taken after the dispute had arisen, which dispute is the subject of the original and cross cause before me; and that it was taken for the purpose of obtaining the opinion of counsel for the guidance of one of the parties in respect of that very dispute. There cannot, in my judgment, be any doubt that an opinion taken under such circumstances for such a purpose, was privileged at the time it was taken; and as the dispute has become the subject of the present litigation, I think it clearly retains its privilege in this suit. I give no opinion as to the obligation of the defendant to answer any particular charges or interrogatories; my judgment is confined exclusively to the production of the opinion itself. Motion refused.

*Woods v. Woods.* Michaelmas Term, 1844.

<sup>a</sup> L. O. xxviii. 446.

<sup>b</sup> L. O. xxvi. 477.

The defendants in their pleas set out the indictment, and went on to allege that the consideration for the said supposed promise in the declaration mentioned, was and is illegal, and that such supposed promise was consequently null and void. The plaintiff demurred to the pleas of the defendants, assigning as causes of demurrer, that the consideration in the said pleas alleged to be illegal is not illegal, but valid and sufficient to maintain the promise in the declaration alleged.

Mr. Bliss and Mr. Pickering in support of demurrer.

The question raised on these pleadings is, whether the compromise of an indictment for a misdemeanor forms a good and valid consideration for a promise to pay money. Assuming the transaction to be illegal, yet the defendants having entered into the contract, they cannot now turn round and avail themselves of their own illegal act to avoid the agreement. But a compromise of an indictment in the way done here is good in law. The indictment was for an offence partly civil and partly criminal; and cases similar to the present have been compromised with the sanction of the first judges of the land. It is stated by Mr. Watson,\* in his work on awards, that matters purely criminal in nature are, for obvious reasons, not capable of being submitted to the decision of an arbitration. He goes on to state; "Perhaps the clearest rule to be drawn from the cases on the subject, is, that indictments for assaults, nuisances, &c. may be referred to arbitration, by leave, or by authority of the court where they are depending; but without such permission or authority indictments cannot be referred;" and this rule will reconcile all the reported cases on the subject. The cases of *Rez v. Rant*, *Rez v. Coombs*, and *Rez v. Falkland* and others, are there noticed. There is nothing illegal in comprising a misdemeanor, though it may be to compound a felony. The agreement in this case was made with the consent of the presiding judge, and that fact is noticed by Lord Ellenborough in giving judgment in *Bealey v. Wingfield*.<sup>b</sup> In *Draye v. Ibberson*<sup>c</sup> it was held that a promissory note, given for compounding a misdemeanor, may be enforced in an action at law. The cases are very numerous in which the subject has come before the court at different times. *Elworthy v. Bird*,<sup>d</sup> *Harvey v. Morgan*,<sup>e</sup> *Johnston v. Ogilby*,<sup>f</sup> *Baker v. Townsend*,<sup>g</sup> *Fallowes v. Taylor*,<sup>h</sup> *Edgcombe v. Road*,<sup>i</sup> *Kirk v. Strickwood*.<sup>j</sup>

Mr. Kelly and Mr. Pashley, contra.

It is laid down by Blackstone,<sup>k</sup> "that it is not uncommon, when a person is convicted of a misdemeanor, which principally and more immediately affects some individual, as a bat-

tery, imprisonment, or the like, for the court to permit the defendant to speak with the prosecutor before any judgment is pronounced; and if the prosecutor declares himself satisfied, to inflict but a trivial punishment." In those cases, however, public justice has been satisfied by obtaining the conviction. This is no such case; no conviction has taken place; and the simple question here is, whether an agreement to pay a sum of money in consideration of a person who has been assaulted agreeing to give up a prosecution commenced for the assault, is valid in law. There is nothing unreasonable in a party receiving satisfaction after a conviction has taken place, but an agreement that the case shall not go to trial is quite illegal, and can form no consideration for a promise to pay money. In the case of *Johnston v. Ogilby*<sup>m</sup> there was only a suggestion thrown out by the Lord Chancellor, and the question in fact was never argued. A nuisance may be referred, as far as relates to the individual, but no award can be enforced where the consideration is the putting an end to a purely criminal prosecution. The case of *Collins v. Blantern*<sup>n</sup> is directly in point. Several persons were indicted for perjury, and an agreement was made, that in consideration that the parties indicted would give the prosecutor a sum of money, the prosecutor would not appear at the trial to give evidence against them. An action being brought to recover the sum so promised to be paid, it was held that the whole transaction was illegal. In *Pool v. Bousfield*<sup>o</sup> the agreement between the parties was held illegal on very similar grounds. In *Evans v. Jones*<sup>p</sup> it was held that a wager on the conviction or acquittal of a prisoner on trial on a criminal charge, was illegal, as being against public policy. The consent of the court in this instance has nothing to do with it, it cannot give any force or effect to an illegal transaction.

Mr. Bliss was heard in reply.

Cur. ad vult.

Thursday, June 27.—Lord Denman, C. J., now delivered judgment. After stating the nature of the question raised upon the pleadings, his lordship said, We have considered this case and are of opinion that a compromise of matters which were the subject of a criminal proceeding may lawfully take place, in cases where the party prosecuting can have his civil remedy for the same matter, and where nothing of an exclusively criminal offence is mixed up with it; for in such case the injury is frequently more of a private than a public nature. But such compromise cannot lawfully take place where no other but a criminal proceeding can be had: there the right of the public cannot be sacrificed to private advantage. Here the proceeding being for riot as well assault, is one, so far as it relates to the riot, wholly of a public nature, and the agreement to compromise it is

\* Watson on Awards, 47, 48.

<sup>b</sup> 11 East. 46.

<sup>d</sup> Sim. & Stu. 372.

<sup>g</sup> 3 Peere Williams, 277.

<sup>h</sup> 7 T. R. 475.

<sup>k</sup> 4 B. & Adol. 421.

<sup>c</sup> 2 Esp. 643.

<sup>e</sup> 2 Stark. 17.

<sup>f</sup> 7 Taunt. 422.

<sup>i</sup> 5 East. 294.

<sup>j</sup> 3 Vol. 363.

<sup>m</sup> 3 Peere Wms. 277.

<sup>n</sup> 2 Wilson, 341.

<sup>o</sup> 1 Camp. 55.

<sup>p</sup> 5 M. & 77.

therefore invalid, the consideration for such agreement being illegal. The judgment must therefore be entered for the defendant.

Judgment for the defendant.

*Keogh v. Leman*, T. T., 1844.

**Queen's Bench Practice Court.**

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

**ATTORNEY.—ADMISSION.—NOTICE.**

*Where it was sworn that a party proposing to be admitted an attorney, gave three days before Easter Term the requisite notices for admission, &c. in Trinity Term; that he was examined in Trinity Term, and obtained the examiners' certificate of fitness, but that having thereupon accepted the situation of clerk to a certain firm of attorneys, and believing that he might be admitted in the ensuing Michaelmas Term without fresh notices, he failed to be admitted in Trinity Term, the court on a motion made early in Michaelmas Term, allowed the applicant to give the requisite notices for admission on the last day of the same term.*

A. J. Stephens (on the 6th Nov.) moved that Mr. Thomas Udall might be admitted an attorney of this court on the last day of the present term, under the following circumstances: The rule was moved on the affidavit of the applicant, which stated that his articles of clerkship expired on the 24th May 1844; that he did upwards of three days before the commencement of Easter Term last past, deliver a notice in writing at the office of the Masters of her Majesty's Court of Queen's Bench, of the intention of the defendant to apply in the then next Trinity Term to be admitted an attorney, containing his name, place of abode, &c., and that he did on the same day enter a copy of such notice in each of the two books kept for that purpose, at the chambers of the judges of the said court; that he also did on the same day deliver a notice in writing at the Hall of the Incorporated Law Society, of his intention to apply in the then next Trinity Term for admission, in order to be admitted an attorney, and that such last-mentioned notice contained all the particulars herein mentioned to be contained in the first-mentioned notice; that in pursuance of such notice he was examined in Trinity Term last as to his fitness and capability to act as an attorney, and by a certificate of examination dated 6th June 1844, the said examiners did certify and testify that the deponent was fit and capable to act as an attorney; that at the time of giving such notices as hereinbefore mentioned, and down to the 5th June last he intended to be admitted pursuant to such notices, but on account of having on the 6th June last entered into the service of certain gentlemen, attorneys at law, (naming them), as their clerk, and being aware that the examiners' said certificate remained in full force until the last day of this present Michaelmas

Term, and believing that he might then be admitted as an attorney without giving any other notices than as aforesaid, and from no other cause whatever, the deponent was not admitted an attorney in the said Trinity Term; and that he was not aware until the 6th November inst., when he applied to the proper office of this court for a fiat to be admitted an attorney of this court, that any other notices than those given by him as aforesaid, were necessary to enable him to be admitted an attorney in the present Michaelmas Term; that from the said 6th day of June last down to the time of swearing this affidavit he had been really and actually employed by the above-named gentlemen as their clerk, in the practice and profession of an attorney and solicitor, and has not been employed in any other business or profession whatever, and that he is most desirous of being admitted as an attorney in the present Michaelmas Term.

*Wightman, J.*—The applicant may, under these circumstances, give the requisite notices immediately, and if not otherwise objected to, he may be admitted on the last day of the present term.

Rule accordingly.

*In the matter of Udall.* Q. B. P. C., M. T., 1844.

**Exchequer.**

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

**ATTORNEY'S BILL.—TAXATION.**

*Where a bill of exchange is given in payment of an attorney's bill of costs, the twelve months within which the bill of costs is taxable, dates from the time of the payment of the bill of exchange, not from the time of its delivery.*

On the 17th February an order had been made by Alderson B., under the 41st section of the 6 & 7 Vict. c. 73, directing the Master to tax such bills of Mr. Harries for business done in the common law courts as had not been paid more than twelve months before the summons was taken out.

On the 14th April the Master reported that certain bills of costs had not been settled in cash payments more than twelve months; that a promissory note for 296*l.* 15*s.* 9*d.*, dated 22nd May, 1839, and afterwards a substituted promissory note for 279*l.*, dated 14th August, 1839, payable two months after date, was given to Harries for the same: but that 279*l.* was not paid in cash till July last; that Harries held certain title-deeds until payment was made on the 24th July last of 820*l.*, which included the note for 279*l.*, which was delivered up with the deeds. Under these circumstances, a rule had been obtained to show cause why the Master should not forbear to tax the costs.

*Jervis* showed cause.—Under the 41st section of the 6 & 7 Vict. c. 73, an attorney's bill may be taxed at any time within twelve months after payment. The question, then, is whether



the delivery of a promissory note is a payment within that section, or whether the payment is incomplete until the note is paid in cash. A similar question arose in *Sayer v. Wagstaff*, (5 Beav. 415,) and there Lord *Langdale, M. R.*, says, "the debt may be considered as actually paid if the creditor at the time of receiving the note have agreed to take it as payment of the debt, and to take upon himself the risk of the note being paid; or if from the conduct of the creditor, or the special circumstances of the case, such a payment is legally to be implied. But in the absence of any special circumstances throwing the risk of the note upon the creditor, his receiving the note in lieu of present payment of the debt is no more than giving extended credit, and postponing the demand for immediate payment, or giving time for payment on a future day, in consideration of receiving this species of security."

*V. Williams*, in support of the rule.—It is conceded that the mere delivery of a promissory note is not a payment; but it is contended that, when the note is paid, such payment has relation back to the time when the note was given. The meaning of the 41st section of the 6 & 7 Vict. will be best understood by reference to the practice before it passed. At that time, the courts would not refer a bill for taxation after payment, unless a strong case was made out for their interference. (Tidd Prac. 332.) The authorities being somewhat at variance as to the time within which the application should be made, the legislature fixed the period of twelve months. Payment need not necessarily be in cash. The delivery of a bill of exchange has been decided to be a "part payment" within the 9 Geo. 4, c. 14, so as to defeat the operation of the statute of limitations; *Irving v. Veitch*, 3 Mea. & Wel. 90; *Gowan v. Foster*, 3 B. & Adol. 507. A check operates as payment until it has been presented and refused.

*Pollock, C. B.*—The rule must be discharged. *Sayer v. Wagstaff* is expressly in point, and what the Master of the Rolls there says is quite in accordance with what has always been considered law in the common law courts, viz., that as between the same parties a bill of exchange is not payment, and, if dishonoured, the holder may resort to the original consideration. The cases decided on the 9 Geo. 4, c. 14, have no application to this question. The effect of the exception in that statute is to leave all transactions in the nature of payment just as they stood before the statute passed. We are now called upon to put a construction on the word "payment" in the 6 & 7 Vict. c. 73, s. 41, and if it were necessary to speculate on any consequences likely to follow from our decision, I should be inclined to give a liberal rather than a narrow construction to the act. If in this case we are to look to special circumstances, the Master has reported that the attorney held some deeds as a security, and that is ample proof that he considered these notes also as a security only.

*Alderson, B.*—Unless the delivery of these notes could have been pleaded as payment in bar to an action for the costs, they are not a

payment within the meaning of the act. It is clear from the facts, that until the notes were paid they could only have been pleaded as a suspension of the debt. The 9 Geo. 4, c. 14, rests on quite a different ground: there the word "payment" must be construed with reference to the surrounding circumstances. The only transaction from which the inference of an existing debt arose, was the delivery of the bill: its subsequent payment to a third party had nothing to do with the question.

*Gurney, B.*, concurred.

*Rolfe, B.*—There may be acts of parliament in which the word "payment" may require a different construction, but in this case it means a parting with the client's money, or money's worth, so that the attorney cannot afterwards sue for the debt. Rule discharged.

*Ex parte Harries.* Exchequer. Trinity Term, 23rd May, 1844.

### THE EDITOR'S LETTER BOX.

A correspondent states that our notice at p. 19, from 1 Collyer 154, of the application by the Archbishop of Canterbury to the Court of Chancery for its order to tax and pay the costs of paying money into court, under the Copyhold Enfranchisement Act of Parliament, must be imperfectly stated, for by the copyhold act the purchase money (exceeding 200*l.*, and the Lord of the Manor being only temporarily so), is to be paid into the bank to the credit of the Accountant-General of the Court of Chancery, "ex parte the copyhold commissioners;"—this payment into the bank is therefore not made by the lord, but by the tenant for the enfranchisement of his copyhold. He first obtains the Accountant-General's direction to the bank to receive the money—he then pays it there, and afterwards leaves the bank cashier's receipt at the Attorney-General's, who files it, gives out his official copy of it, with his accustomed certificate thereof—this being the case, the archbishop could have incurred no costs in paying in the money! it would be desirable, therefore, to know what the real application to the court was and its order.

Our correspondent inquires how it happens, that as the act of parliament under which such money is paid into the bank to the credit of the Accountant-General, &c. is to be so, *without fee or reward*, the Accountant-General charges six shillings, or some such sum for the copy of the receipt and certificate, it being imperative on the payer to file the cashier's receipt with the Accountant-General?

We are obliged by the suggestions of P. Q. R., and they shall be considered in the course of the present volume.

E. O. G. on classical examinations shall be considered.

The work of Mr. Burge and Mr. C. Clark, on Colonial Law, are, we think, the proper books for "Discipulus." For the other information he requires, we recommend him to apply to the Colonial Office.

W. R. H. should also apply at the same office.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

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SATURDAY, NOVEMBER 30, 1844.

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—"Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.

HORAT.

**THE TRANSFER OF PROPERTY  
ACT.**

If we were addicted particularly to self-complacency, and were gratified to find our prophecies turn out to be true, we confess we should be disposed to exult a little on the present position of the act of the last session, called "An act to Simplify the Transfer of Property." When the act was first brought in, we stated our general approbation of its nature and objects, but deprecated its being proceeded in but with the greatest care and circumspection; and on its somewhat unexpected revival at the end of July, we strongly urged that it had not been maturely considered; would lead to much doubt and difficulty; and that it was, on the whole, better to defer it to the next session. It was however passed; and as it had become the law of the land, we felt it to be our duty as much as possible to facilitate its operation in practice, and rather "to open the law upon doubts," than "to open the doubts upon the law." These latter, however, are now becoming so strong, and are proceeding from so many quarters worthy of attention, that we find ourselves almost compelled to notice some of the questions which have arisen on some of the clauses. We might indeed fill a number with those with which some of our contemporaries have been perplexing themselves and their readers. We shall, however, notice only some of the leading and important doubts.

One commentator, then, has boldly started this query on the last section: whether it does not practically repeal the whole act? By this section the act is to

take effect from the 31st day of December, 1844, "and shall not extend to any deed, act, or thing, executed or done, or (except so far as regards the provisions hereinbefore contained as to existing contingent remainders) to any estate, right, or interest created before the 1st day of January, 1845."

If the act, it has been asked, is not to extend to any estate, right, or interest created before the 1st of January, 1845, it will have no effect for some time at least; and as the adoption of its advantages is not compulsory or obligatory, it will be better to shut up the act until we come to deal with some estate, right, or interest created after the first of January, 1845. And there is certainly some ground for this doubt; but we conceive that this construction would be giving a much more sweeping effect to this clause than is warranted, thus practically repealing the act for some time to come, and nullifying its general intention. There is however one clause in the act to which it clearly relates, although we can hardly conceive that this was the intention of its framers. By the fifth section, any person may convey or charge by any deed, any contingent or executory interest, right of entry for condition broken, or other future estate or interest in any freehold, copyhold, or leasehold land, &c. Now this is certainly within the words of the 13th section, and therefore no future estate, right, or interest, created before the 1st of January next, can be conveyed by deed, and the law as to these is left as it was before the act passed. To this extent, therefore, the act will be practically inoperative.

We think an effectual difficulty is also fixed upon s. 9, by which "an executor or administrator of a mortgagee is empowered, on the discharge of a mortgage, to convey the legal estate vested in the heir or devisee." As this power only arises where "possession of the land shall not have been taken by virtue of the mortgage, or any action or suit depending," and it may be difficult to satisfy a purchaser that neither of these events has happened, we conceive that the mortgagee will prefer taking a conveyance in the old way from the heir of the mortgagor, and not from his personal representative.

Another doubt, which is of practical importance, affects that part of the 11th section which is as follows: "That it shall not be necessary in any case to have a deed indented." Now this, it is said, does not go far enough; indenting is in fact not necessary at the present time: the clause should have provided that a deed not indented should, as between the parties, have the effect of an indenture; alluding, among other things, to the well known rule, that a deed poll does not operate by estoppel; this operation being confined to an indenture. That the rule is so laid down in all the books, is quite clear. Thus, Lord Coke says, speaking of leases, "If the lease be made *by deed indented*, then are both parties concluded; but if it be *by deed poll*, the lessee is not estopped to say, that the lessor had nothing at the time of the lease made."<sup>a</sup> So in Bacon's Abridgment:<sup>b</sup> "If such lease for years were made by deed poll of lands wherein the lessor had nothing, this would not estop the lessee to aver that the lessor had nothing in those lands at the time of the lease made, because the deed poll is only the deed of the lessor, and made in the first or third person, whereas the indenture is the deed of both parties, and both are, as it were, put in and shut up by the indenture." See also *Bensley v. Burdon*,<sup>c</sup> the leading modern case as to the operation of indentures by estoppel, in which the same distinction is taken. Unless, therefore, a deed polled or shaven under the act is to have the effect of an indenture, how, it is asked, is it to operate by way of estoppel? But here we conceive that the reason of the operation by estoppel must be looked to, which is indeed

stated by Bacon: "A deed," says Blackstone,<sup>d</sup> "made by *one party only* is not indented, but polled or shaven quite even, and therefore called a deed poll, or a single deed." And Mr. Burton says, speaking of estoppel, "An indenture is required, that the deed may be the act of both parties; for it is necessary that estoppels of this kind should be reciprocal."<sup>e</sup>

We have, therefore, little doubt that although a deed, after the 1st of January, 1845, was not indented, nor professed on the face of it to be an indenture, yet if it was between parties who executed the deed, and who were mutually bound that the reason of estoppel would apply, and that it would so operate. But although this is so, yet we cannot advise our readers to act on this possible construction of the act, but think it will be better to be on the safe side, and begin our deeds, as heretofore, with those apparently immortal words, "This indenture."<sup>f</sup>

With these doubts affecting the act, we conceive that it will cause but little, if any, alteration in the present practice of conveyancing. It seems probable that that branch of the profession who have to carry the law of property into practical operation will disregard its provisions, and wait at all events for an amendment and declaratory act on the subject; while the other part of the profession seems much inclined to enjoy a laugh at all attempts "to simplify the transfer of property."

#### MEMOIR OF THE LATE LEWIS DUVAL, ESQ.

[Abridged from the *Law Review*, No. I.]

"MR. DUVAL was the son of an eminent diamond merchant settled in this country, but of Genevese origin, with a pedigree of some syndical dignity, and, we believe, connected by marriage with the family of the celebrated Monsieur Dumont. He was sent early to

<sup>d</sup> 2 Bla. Com. 296. <sup>e</sup> Bart. Comp. 330.

<sup>f</sup> Lord Coke says, "If a deed begin with '*hæc indentura*,' &c., and in troth the parchment or paper is not indented, this is no indenture, because words cannot make it indented. But if the deed be actually indented, and there be no words of indenture in the deed, yet it is an indenture in the law; for it may be an indenture without words, but not by words without indenting." Co. Litt. 229 a. It would seem, therefore, that a pair of scissors, would, if properly applied, always render a deed *safe* in this respect. To some editions of the act precedents have been appended, beginning "*a deed*" or "*this deed*." This at any rate is premature.

<sup>a</sup> Co. Litt. 47 b.

<sup>b</sup> Lease. O.

<sup>c</sup> 2 Sim. & Stu. 519; observed on in *Right L. Jefferys v. Bucknell*, 2 B. & Adol. 278.

Cambridge, and entered at Trinity Hall; and as the members of that college generally, as it is termed, go out in law, his attention was not particularly turned to the study of mathematics, and it is not understood that he applied to any particular subject during his residence, beyond the usual college exercises. Some few elementary books on the civil law were read during his time, and some courses of lectures were attended; but he did not in after-life pretend to have derived much benefit from his elementary studies in civil law. Soon after leaving college he was elected a fellow, and until his marriage, long after, continued many years at Christmas to join the party of lay-fellows who regularly attend during the Christmas holidays. Here he formed a close intimacy with the late respected master, Dr. Le Blanc. On leaving college he became a pupil of Mr. Charles Butler, who entertained the highest opinion of his industry and talents, often saying that he was a draftsman by intuition. It may be presumed that the hesitation in his speech determined the branch of the profession which Mr. Duval was to select, though perhaps it was expected when he entered Trinity Hall (the college where the civilians are usually educated) that he might have overcome this defect, and have been enabled to practise at Doctors' Commons. After remaining with Mr. Butler somewhat more than two years, he began to practise for himself, but was not immediately called to the bar; a course at that time common with conveyancers; and it is understood that during the early years of his professional career he was much employed by Mr. Butler in the preparation of such of his drafts as required elaborate care. Some adverse circumstances in the affairs of his father rendered him very early almost entirely dependent on his profession; and, perhaps, in the particular branch to which he devoted himself, never was there a more steady and complete conquest of all the difficulties which beset the path of the early practitioner. When he commenced practice, Mr. Butler and the late Mr. Shadwell were at their greatest eminence. Mr. Hargrave also was in full practice as a conveyancer, and the late Mr. Sanders and Mr. Preston were, with others, rising into eminence. The merits of Mr. Duval were early discovered by all these persons, but especially by the late Mr. Sanders, a conveyancer of great skill and profound learning, and with whom Mr. Duval continued on intimate terms of friendship till the death of the former. In a memoir which we intend to give to our readers, we propose to show what was the state of practice amongst conveyancers when Mr. Butler first began his career, and to set forth what were his labours, and to what extent his peculiar practice had the effect of improving the system in the preparation of legal instruments.

"The system, for the improvement of which Mr. Butler did so much, was in a great degree adopted by Mr. Duval, and in many respects, as his experience increased, he was enabled to introduce important amendments of his own.

Unlike Mr. Butler, Mr. Hargrave, Mr. Sanders, Mr. Preston, and other eminent conveyancers, Mr. Duval owed his rise entirely to his skill as a chamber practitioner. He never published any professional work; and, indeed, it is believed that the only articles from his pen which are in print are the very celebrated reasons in the appeal case of *Scarisbrooke v. Scarisbrooke*, and the greater part of the second report of the Real Property Commissioners which relates to the establishment of a general registry of deeds. It is known that Mr. Duval, who was one of the Real Property Commissioners, took a leading part in the discussions relating to this measure, and it is understood that his reasoning tended much to bring round the late Mr. Bell and Mr. Sanders to his views. The plan of this registry, and the reasons in support of it, were mainly his. Beyond the accidental contact at an occasional consultation, up to the time of his becoming a member of the Real Property Commission, he had been confined to the perusal of abstracts, and the preparation of drafts, and the answering of cases. On joining the commission he felt, perhaps for the first time, fully his own superiority on general subjects connected with jurisprudence: till then, he had scarcely looked beyond the acquiring the law necessary for his immediate wants; but having entered on the subject of a registry, he applied the whole energies of his profound and clear mind to it, and produced a plan, and reasons in support of it, which obtained the respect and applause of all, as well as the approbation of many of the most eminent lawyers of the day. If it had a defect, it was *too perfect*: every detail was so elaborated, that persons studying the plan were startled at its apparent complexity and difficulty, and it was only on a laboured and minute examination that its entire merits and completeness was discovered. Indeed it is apprehended that the plan in question is the plan for a registry, and that any scheme founded on other principles will be erroneous, as all existing registries are without question erroneous as well as defective. With the plan as to the registry, his particular interest in the Real Property Commission seems to have ceased, though he entered largely into the discussions of the various recommendations contained in the other reports. On the retirement of Mr. Butler, Mr. Sanders, and Mr. Preston, Mr. Duval came to be considered as the head of the profession, and perhaps no one of his predecessors held that situation so completely without a rival, and by universal consent, as he did. His clearness, caution, and great practical experience, combined with his patience and extreme urbanity, rendered him eminently suited to this important situation,—and we say important advisedly, because one who holds such a rank as he did, and who has the entire confidence of both branches of the profession, becomes in fact a judge in ninety-nine cases out of the hundred which are brought before him; and where one case relating to real property is settled by a court of law, a hundred are decided by the opinion of the leading conveyancer of

the day. He would have been a bold man who, except under very particular circumstances, advised his client to undertake a suit in the teeth of a clear opinion of Mr. Duval.

"From the importance to society of the situation held by him, the amount of the loss may be measured. He has, it is true, left many very eminent practitioners enjoying a large share of public confidence, and to whom it would be invidious here particularly to refer. Yet, we have no hesitation in saying that some time, at least, must elapse before any one member of the profession will obtain that complete confidence both of the solicitors and his brother conveyancers, which for many years past was enjoyed by the subject of this paper. He early took pupils, as is the custom of all conveyancers, and many very eminent practitioners studied under him. Amongst the earliest of his pupils were the present Lord Chancellor of Ireland, Mr. Tinney, Mr. Belandren Ker, Mr. Christie, and Mr. Loftus Wigram, all of whom, we know, were affectionately attached to him, and entertained the highest respect for his professional attainments. He died on the 11th of August 1844, in his 70th year. His death was almost instantaneous, arising from affection of the heart.

"Mr. Duval had not the slightest pretensions to scholarship, but was not wanting in the attainments necessary to constitute a well-educated gentleman. In writing he expressed himself with perfect precision, and with the utmost purity and elegance. He had read most of the popular English classics, and had a considerable tincture of French literature. In his latter years he sedulously avoided all unprofessional reading which did not directly minister to his amusement. Having carefully read all the great English poets and novelists of the last forty years, he testified much gratitude to a friend who directed his attention to *Balsac*, and the other leading French novelists of the day; and the leisure hours of the last two years of his life were devoted, to a considerable extent, to their not very improving pages. No man could be less liable to the charge of any grossness or excess in his enjoyments; but Mr. Duval was Epicurean in his disposition, and a careful economist of his pleasures. He loved port wine, but always drank claret; he dined well, and prolonged his dinner, and read books of amusement with deliberation, for he would not despatch an enjoyment which might be protracted. This sketch of his general character and habits would be incomplete if we did not notice that in his youth he was addicted to fox-hunting, loved to be well mounted, and rode boldly and well. This pursuit was continued till some time after he had attained considerable eminence in his profession. He was also an angler; but that to which he gave all his attention for the last twenty years of his life was shooting. The months of September and October were always spent in some quarter of the country where he had secured a well-stocked manor. He shot indifferently well, and was curious in his guns,

dogs, shooting pony, and all equipments for the field. Though in a mild form, he was not entirely without the cant of sportmanship, and, like most sportsmen, could never entirely divest himself of a slight feeling of pity, with some mixture of contempt, for men who neither rode nor shot.

"Mr. Duval was not what is called a learned lawyer; he was not very familiar even with the cases decided in his own time; but no man's eminence rested on a more solid foundation. To a competent supply of legal learning he added vast experience, and the comprehension and clearness with which his mind took in the extensive and complicated matters with which he had to deal, could not be exceeded. He possessed a quick and subtle apprehension of legal principles, and a *natural logic* which was never at fault. To all this he added infinite caution, and a patience which could not be tired out. Candour was, with him, rather a necessary consequence of the frame of his mind, than a virtue. His understanding was so just, that conviction inevitably followed the propounding of sufficient reasons; and he would have shrunk from being guilty of the absurdity of withholding his assent after good grounds for yielding it were presented to him. In his intercourse with his friends he was in a high degree kind and confiding; and in his attachments was wholly devoid of changeableness or caprice. His personal demeanour was eminently conciliating; and, whilst he was universally looked up to as the great light of the day in conveyancing lore, he was in an equal degree loved and esteemed by the whole profession for his kindness and urbanity."

## CHANGES IN THE LAW IN THE LAST SESSION OF PARLIAMENT.

### JOINT STOCK BANKS.

7 & 8 Vict. c. 113.

An Act to Regulate Joint Stock Banks in England. [5 Sept. 1844.]

The following is an analysis of this act:—

1. No joint stock bank established after 6th May last, to carry on business unless by virtue of letters patent granted according to this act; but companies previously established not restrained from carrying on business until letters patent have been granted.
2. Company to petition for charter.
3. Charter to be granted on report of Board of Trade.
4. Deed of settlement.
5. No company to commence business till deed executed and all the shares subscribed for, and at least half the amount paid up.
6. Company to be incorporated.
7. Incorporation not to limit the liability of the shareholders.
8. Actions by or against shareholders.
9. Decree or judgment to be enforced against company and shareholders.

10. Execution against company to precede execution against present or former shareholders. Extent of liability of former shareholders.

11. Reimbursement of individual shareholders.

12. Individuals paying under execution to recover against the company.

13. How such execution is to be had.

14. Contribution to be recovered from other shareholders.

15. Further remedy in case of bankruptcy, &c. of company's shareholders.

16. Memorial to be registered.

17. Memorials of occasional changes.

18. Form of memorials. 5 & 6 W. 4, c. 62.

19. Evidence of memorials.

20. Commissioners of stamps to give certified copies on payment of ten shillings.

21. Existing liabilities to continue till new memorials.

22. Bills and notes to be signed by one director or manager. Manager not personally liable.

23. Transfers of shares to be registered, &c.

24. Transfer not to be made until all calls paid.

25. Closing of transfer books.

26. Transmission of shares by other means than transfer, to be authenticated by a declaration.

27. Proof of transmission by marriage, will, &c.

28. Notices to joint proprietors of shares.

29. Receipts for money payable to minors, &c.

30. Company not bound to regard trusts.

31. Power to make calls.

32. Interest on calls unpaid.

33. Enforcement of calls by action.

34. Declaration in action for calls.

35. Matter to be proved in action for calls.

36. Proof of proprietorship.

37. Forfeiture of shares for nonpayment of calls.

38. Notice of forfeiture to be given before declaration thereof.

39. Forfeiture to be confirmed by a general meeting. Sale of forfeited shares.

40. Evidence as to forfeiture of shares.

41. No more shares to be sold than sufficient for payment of calls.

42. On payment of calls, forfeited shares to revert.

43. Service of notice on the company.

44. Existing companies may continue their trades until twelve months after the passing of this act.

45. Existing companies may be brought under this act.

46. Agreements entered into with companies after their incorporation, to be enforced as if made before incorporation.

47. Existing companies to have the powers of suing and being sued. 7 G. 4, c. 46.

48. Banking companies to be deemed trading companies.

49. Interpretation of act.

50. Act may be amended.

Schedules referred to by the foregoing act :—

#### SCHEDULE (A.)

Memorial or account to be entered at the Stamp Office in London, in pursuance of an act passed in the eighth year of the reign of Queen Victoria, intituled [here insert the title of this act] ; viz.

Firm or name of the banking company ; viz. [set forth the firm or name.]

Names and places of abode of all the members of the company ; viz. [set forth all the names and places of abode.]

Names and places of the bank or banks established by such company ; viz. [set forth all the names and places.]

Names and places of abode of the directors, managers, and other like officers of the said banking company ; viz. [set forth all the names and places of abode.]

Names of the several towns and places where the business of the said company is to be carried on ; viz. [set forth the names of all the towns and places.]

A. B., of \_\_\_\_\_ manager [or other officer, describing the office] of the above-mentioned company, maketh oath and saith, That the above-written account doth contain the name, style, and firm of the said company, and the names and places of the abode of the several members thereof, and of the banks established by the said company, and the names, titles, and descriptions of the directors, managers, and other like officers of the said company, and the names of the towns and places where the business of the company is carried on, as the same respectively appear in the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before, the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the county of \_\_\_\_\_

C. D., Justice of the peace in and for the county of \_\_\_\_\_ [or Master or Master Extraordinary in Chancery].

#### SCHEDULE (B.)

Memorial or account to be entered at the Stamp Office in London, on behalf of [name of the company], in pursuance of an act passed in the eighth year of the reign of Queen Victoria, intituled [insert the title of this act] ; viz.

Names and places of abode of every new or additional director, manager, or other like officer of the said company ; viz. A. B., in the room of C. D., deceased or removed, [as the case may be ;] [set forth every name and place of abode.]

Names and places of abode of every person who has ceased to be a member of such company, viz. [set forth every name and place of abode.]

Names and places of abode of every person who has become a new member of such company; viz. [set forth every name and place of abode.]

Names of any additional towns or places where the business of the company is carried on; viz. [set forth the names of all the towns and places.]

A. B., of \_\_\_\_\_ manager [or other officer] of the above-named company, maketh oath and saith, That the above-written account doth contain the name and place of abode of every person who hath become or been appointed a director, manager, or other like officer of the above company, and also the name and place of abode of any and every person who hath ceased to be a member of the said company, and of every person who hath become a member of the said company since the registry of the said company on the \_\_\_\_\_ day of \_\_\_\_\_ last, as the same respectively appear on the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the \_\_\_\_\_ day of \_\_\_\_\_  
at \_\_\_\_\_ in the county of \_\_\_\_\_

C. D., Justice of the peace in and for the county of \_\_\_\_\_ [or Master or Master Extraordinary in Chancery].

#### SCHEDULE (C.)

##### *Form of Transfer of Shares.*

I, \_\_\_\_\_ of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ paid to me by \_\_\_\_\_ of \_\_\_\_\_ do hereby transfer to the said \_\_\_\_\_ share [or shares], numbered \_\_\_\_\_ in the business called "The \_\_\_\_\_ Banking Company," to hold unto the said \_\_\_\_\_ his executors, administrators, and assigns [or successors and assigns], subject to the several conditions on which I held the same at the time of the execution hereof. And I the said \_\_\_\_\_ do hereby agree to take the said share [or shares], subject to the same conditions. As witness our hands and seals, the \_\_\_\_\_ day of \_\_\_\_\_

#### PROCEEDINGS OF THE INCORPORATED LAW SOCIETY.

WE are enabled, from a report which has just been printed, to state the result of the annual general meeting of the members of this society, which was held in their hall in Chancery Lane, on Friday, the 23rd August, Edward Foss, Esq. in the chair. The secretary read the report of the committee of management. It detailed the various proceedings in which the committee had been engaged during

the past year. The subjects of this report appear to involve all the most important matters affecting the interests of the profession from the time of the previous annual meeting.

The report, after adverting to certain proceedings in Chancery, proceeded as follows:—

"*Bills in Parliament.*—The numerous measures which have been proposed in parliament during the last session, for the alteration of the law, have called for the attentive consideration of the committee.

"To the County Courts' Bill they framed a series of objections, both in principle and detail, which they submitted to the Secretary of State, with a request that a deputation might attend him on the subject. This, however, was rendered unnecessary by the withdrawal of the bill. The same fate attended the bills introduced for the Improvement of the Proceedings in the Superior Courts of Common Law, and for the Recovery of Small Debts; to which, and also to the Debtors' and Creditors' and the Bankruptcy and Insolvency Bills, the Ecclesiastical Courts Bill, the Arches Court Bill, and the Marriage and Divorce Bill, the attention of the committee was also particularly directed.

"The committee have likewise had under their consideration the bill for effecting the Service abroad of Common Law Process, of that relating to the Judicial Committee of the Privy Council, and also the bills introduced by the Lord Chancellor concerning the Transfer of Real Property, and the Jurisdiction in small Charitable Trusts: and they have not failed to notice the following bills, which in a greater or less degree were interesting to the profession, viz., the Joint Stock Companies Bill, the Metropolitan Buildings Bill, the Inclosure of Commons' Bill, the Landlord and Tenant's Bill, the Letters Patent Bill, the Masters' and Servants' Bill, and the County Coroners' Bill.

"The committee have directed their attention to the 60th clause of the Poor Law Bill, with reference to the interference of clerks of boards of guardians in business appertaining to members of the profession; and they have the satisfaction to state, that by the clause as it now stands, the power given to those officers by the 5 & 6 Victoria, c. 57, to take proceedings at the quarter and general sessions no longer exists, and they are enabled to act at petty and special sessions only; so that the operation of the Attorneys' Act remains undisturbed.

"*Business at Judges' Chambers.*—In consequence of the continued delays and great inconvenience in transacting the business at the judges' chambers, the committee deemed it advisable to prepare a petition to parliament, recommending that one of the Masters of the court should be authorised, under their Lordships' regulation, to hear ordinary summonses and matters of a practical kind, and also to administer oaths,—so that the time of the judges might be saved, and the business transacted more conveniently and expeditiously.

"*Master's Clerk.*—The committee received

a memorial from several of the members practising in the Court of Chancery, complaining of the appointment of an unqualified person as chief clerk to one of the Masters; and in consequence of representations made by them, they have been assured, that the earliest opportunity of the introduction into parliament of any bill relating to the court should be taken, to place the qualification for this important office on a satisfactory footing.

**" Probate Duty Office.**—With a view to remedy the delays and inconvenience at the Probate Duty Office, of which complaints were frequently made, the committee, through their chairman, had a communication with the Commissioners of Stamps, the result of which has been an increase of the establishment in that office, sufficient to remove the evil complained of.

**" Courts' Removal.**—The committee has kept in view the object which the Society has for several years been endeavouring to attain—the removal of the courts from Westminster into this vicinity. They have made several attempts to obtain a further hearing before the House of Commons in the present session, but they cannot pretend to say that they have received much encouragement. With reference to this subject, it may be mentioned, that in a recent report of the state of the buildings for the new houses of parliament, provision has been made for the accommodation of practitioners attending them, according to a former recommendation made by this Society, the expense of which is estimated at 5000*l*.

**" Bankruptcy Costs.**—The practice which had for some time prevailed, of having the costs in bankruptcy in the London district taxed by the same registrar, having been found beneficial in producing a uniformity of charge, and in occasioning great convenience in the dispatch of business, the committee, in order to render the practice permanent, deemed it advisable to promote an application to the Lord Chancellor to effect this object, and they have the gratification of stating that their application has been successful.

**" Criminal Law.**—The Criminal Law Commissioners having forwarded to the committee various questions with reference to projected alterations in that branch of the law, the same have been laid on the hall table, with an invitation to the members to make such suggestions as appeared to them advisable.

**" Proposed New Orders of Court.**—The committee, also, in addition to various other professional subjects which have come under their consideration, have devoted their best attention to various Orders of Court, which the judges have done them the honour to submit to them; and they have to express their pride and gratification at the continued kindness with which this Body is treated by the Bench, and the confidence which is reposed in its recommendations.

**" Usages.**—The various points of professional usage in Conveyancing practice which have been submitted to the committee they

have endeavoured to determine to the satisfaction of the parties interested.

**" The right claimed by the Scriveners' Company** to refuse to qualify attorneys to act as notaries in the city of London has been considered, with a view to the alteration of the law at a fit opportunity.

**" New Rules and Orders.**—For the information of the members, the committee during the past year have printed and circulated among them the following papers:—

**" The Act for the Regulation of Attorneys and Solicitors.**

**" The regulations thereunder of the Office of Registrar.**

**" The Table of Costs in Bankruptcy.**

**" The Examination Orders in Chancery.**

**" The Orders in Chancery reducing the fees for Office Copies.**

**" The Orders in Lunacy.**

**" The Rules and Orders relating to Common Law Judgments, and Writs of Execution in Bankruptcy, and**

**" The new Scale of Costs in Actions under 20*l*.**

**" Independently, however, of these various subjects, which have occupied the attention of the committee during the past year, the most laborious and important duty in which they have been engaged has been that which devolved upon them under the Attorneys' and Solicitors' Act, which received the royal assent soon after the last annual general meeting.**

**" Registrar of Attorneys.**—By that act the new and responsible office of Registrar of Attorneys and Solicitors was established, and the performance of its duties was confided to this Society,—a trust which secured to the Body not only a legislative recognition, but a continuance during the whole of his professional career of that superintendence over every practitioner which by his examination previous to admission had already been reposed at his entrance into it. The members will at once see how material a benefit was conferred upon the profession by this appointment, by which the annual certificates were subjected to a stricter regulation, and the possibility of their being issued, as was formerly too frequently the case, to parties who were unentitled by previous admission, was entirely prevented.

**" The extent of the introductory labour imposed on the committee by this appointment will be apparent to the members, when they are reminded that a roll was to be prepared of all the attorneys and solicitors in the kingdom who were entitled to take out certificates—that the dates of their admissions into the several courts were to be discovered and inserted in the appropriate columns—that regulations were to be prepared for carrying the office into full effect—that the forms of the declarations which would be required were to be sent to every practitioner—that a book was to be formed for the insertion of the facts contained in those declarations—that the truth of those facts had to be verified in every instance—that no less than 10,000 certificates had to be framed**



in pursuance of those facts: a plan had to be formed of distributing those certificates within a very few days, without inconvenience to the profession from pressure or delay—and that all these arrangements had to be completed and carried into effect in the short space of two months after the passing of the act.

"By great exertion, however, the whole was accomplished, and the committee were repaid for the labour they had undergone by the success which in all its details attended the system they had planned, and by the satisfaction which they are rejoiced to find the profession have expressed in reference to the arrangements adopted.

*"Advantages of Attorneys' and Solicitors' Act."*—Besides the palpable benefits which the profession thus derive from unqualified persons being prevented from practising, the new act secures many other important advantages both to the profession and the public.

"Among these the following may be enumerated:—

"It renders permanent the appointment of examiners of persons applying to be admitted on the roll:

"It enables a graduate to serve one year of his articles with the agent in London:

"It simplifies the proceedings against attorneys who lend their names to unqualified persons, and against persons assuming to act as attorneys who are not duly qualified:

"It removes several technical difficulties in delivering bills of costs, and enables a solicitor to obtain the taxation of his own bill, and secure a judgment without the expense and delay of an action:

"It makes the Master's certificate final, and prevents a taxation from taking place after a verdict or writ of inquiry; or after 12 months from the delivery of the bill, except under special circumstances, and under any circumstances after 12 months' payment.

"And particularly it repeals enactments scattered over no less than 60 statutes, and consolidates into one act the whole of the law relating to attorneys.

"Not the profession only, but the public also, are benefited by this extensive consolidation; and the latter have a further advantage conferred upon them by the subjection of Conveyancing Costs to taxation,—in reference to which the committee have taken every means in their power to secure to the profession such allowances as have been long sanctioned in that branch of practice; and it will be satisfactory to the members to be informed that the Taxing Masters have adopted the rules which have long prevailed amongst solicitors upon that subject.

"In reference to the subject of costs, it will be convenient in this place to mention that the Taxing Masters in Chancery have determined to disallow on taxation, whether between party and party, or between solicitor and client, any fee to counsel's clerks, beyond the amount mentioned in the scale sanctioned by the Lord Chancellor and the other judges, which should

exceed the rate of 25s. in every 50 guineas paid on the brief.

*"Malpractice."*—By the duties which the Attorneys' Act imposes on the committee, their labours are increased in a variety of ways. The complaints relating to malpractice by attorneys, and of persons presuming to practise who are not duly qualified, have naturally become more numerous.

"Persons who had discontinued their certificates to practise in the superior courts, but who were in the habit of practising in the inferior courts and at the sessions and assizes, to the injury of the public and to the disgrace of the profession, are now obliged to take out certificates; and their misconduct is more easily controlled, and better means of punishment are afforded.

*"Renewal of Certificates."*—Under the new act, persons who omit or neglect to take out their certificates in due course are obliged to apply to the court for permission to renew them—a proceeding which has been substituted for the former practice of re-admission: a regulation which requires a continual watchfulness on the part of the committee, and the necessity in many instances of opposing such renewals, the trouble and responsibility of which the committee cheerfully undertake, as it is manifest that the profession must ultimately be thereby much improved, and its respectability increased in public estimation.

"With reference to this subject, it is important to mention that the Master of the Rolls, at the suggestion of the committee, has assimilated the practice of his court, regarding notices of admission and renewals of certificates, to that of the Common Law Courts; thus introducing a uniformity of practice which will be found very convenient and advantageous."

After some other details relating to the affairs of the Society, its lectures, library, and accounts, the report stated, that

"The committee could not conclude this statement of the labours of the past year without adverting to the great and valuable services rendered by their chairman, Mr. Foss, who was elected a second time to that office, on account of the several important matters then in progress, to which, as to all other subjects calculated to promote the interests of the profession, he had devoted great ability and unwearied attention."

The report was ordered to be entered on the minutes and printed. The vacancies amongst the members of the committee and auditors were then filled up, and the annual account of receipts and payments was read and approved.

## NEW REGULATIONS AT THE INNS OF COURT.

WE some time ago noticed the general purport of the new regulations of the Inns of Court, and now add the following from a cir-

cular sent to the members of the Honourable Society of the Middle Temple.

*At a Parliament holden on the 3rd day of May, 1844.*

Upon reading an order made by the Masters of the Bench of the Honourable Society of the Inner Temple, and transmitted to this society, dated Bench Table, June 16th, 1789, and an order made thereon by this society, at a parliament holden on the 26th day of June, 1789, adopting the same, That is to say,—

“That from and after the end of this present Trinity Term, 1789, no articulated clerk, either to an attorney or solicitor, or to a clerk in the Court of Chancery or Court of Exchequer, ought to be called to the bar until his articles should either have expired or been cancelled for the space of two whole years, and stating that it was then ordered by the Masters of the Bench then present, that the said resolution should be confirmed and adopted as the rule of that society in all future applications of such articulated clerks to be called to the bar.”

And upon reading certain proposed orders of pension of the Honourable Society of Gray's Inn, which were transmitted to this society on the 19th of January last,—

*It is now ordered,* That from and after this day, no attorney at law, solicitor, writer to the signet, or writer to the Scotch courts, proctor, notary public, or parliamentary agent, or person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet, or writers of the Scotch courts, proctor, notary, parliamentary agent, clerk in chancery, or other offices in any court of law or equity, whether such clerk be articulated, or in the receipt of a salary, or of other remunerations for his services, shall be allowed to keep commons in the hall of this society, available for the purpose of being called to the bar, whether such person be already, or may hereafter become a member of this society, until such person, being an attorney, shall have taken his name off the rolls; nor until he, and every other person above named or described, shall have ceased to act or practise as such attorney, writer to the signet, or writer of the Scotch courts, solicitor, proctor, agent or clerk as aforesaid; saving always to any person or persons circumstanced as aforesaid, the benefit of any term or terms which he or they may have kept in conformity with the orders of this society.

*And it is further ordered,* That from and after this day no person already admitted, or who may hereafter be admitted a member of this society, shall apply for or take out any certificate, in pursuance of the statute 44 Geo. 3, c. 98, s. 14, without the special permission of this society by order made in parliament, under pain of expulsion, and that such permission be in no case granted, until the person applying for the same shall have kept such commons in the hall of this society, as in pursuance of the order of parliament of the 16th day of July, 1792, are required to be kept as a qualification for the bar; and that such permission, when granted,

do endure for one year only, from the date thereof; but may be renewed annually, by order of parliament upon petition.

*And it is further ordered,* That every person hereafter to be admitted a member of this society shall sign his name to this order.

*And it is further ordered,* That the above orders be screened in the hall of this society, and in the treasurer's office.

#### MEMORANDUM.

Take Notice, That by the order in parliament of the 13th day of May, 1825, It is provided,—

“That no recipiator for entering into commons shall hereafter be granted to any person, whether owner of chambers or not, whose name stands on the rolls of attorneys or solicitors, or who shall be engaged in any profession other than the law, or in any trade, business or occupation.”

#### TAXATION OF COSTS UNDER THE POOR LAW ACT.

THE following circular has been sent by the Poor Law Commissioners:—

“To the clerks of the peace of the several counties, ridings, divisions, and places, in England and Wales;—To the guardians of the poor of the several unions and parishes in England and Wales;—To the overseers of the poor of the several parishes and places in England and Wales;—And to all whom it may concern.

“Whereas it was enacted by the act passed in the last session of parliament, intitled ‘An act for the further amendment of the laws relating to the poor in England,’ that, on application of any overseer, or of any board of guardians, or of any attorney at law, it should be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and that the allowance of any sum on such taxation should be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and that the clerk of the peace should be allowed for such taxation after the rate to be fixed from time to time by the Master of the Crown Office, and declared by an order of the said commissioners.

“And whereas the Master of the Crown Office has fixed the rate of allowance to the clerk of the peace in respect of such taxation as herein declared.

“Now, therefore, we, the Poor Law Commissioners, in pursuance of the statute aforesaid, do hereby declare, that the clerk of the peace of every county or place in England and

Wales, shall be allowed for the taxation of every bill due to any solicitor or attorney, in respect of business performed on behalf of any parish or union, after the rate of *four pence per sheet*, or folio, of *seventy-two words* each.

"Given under our hands and seal of office, this twenty-first day of November, in the year one thousand eight hundred and forty-four.

"(Signed)

(L.S.)

"GEO. NICHOLLS.

"EDMUND W. HEAD."

## EXPECTED NEW CHANCERY ORDERS.

*To the Editor of the Legal Observer.*

SIR,—Observing an announcement in your last number, that these orders are in a state of forwardness, and it being generally rumoured that they will make extensive alterations in the practice, I would submit for the consideration of the judges of the court the expediency of affording an opportunity to the profession of fully considering them before they are issued, or at all events, before they come into operation.

This, I feel confident, from experience, would not only be the means of assisting the practitioner in the not very easy task of making himself master of the proposed alterations in the practice, but would enable him to make suggestions upon such of the orders as relate to matters in detail with which he is familiar, and at the same time induce him to carry them out more cheerfully than he otherwise would do. I am quite sure it needs no comment by me to show that, whether laws are made for regulating the practice of a court or the affairs of a nation, those laws are most likely to be useful and effectual, which, if not made with the concurrence of those who are to carry them out and are to be affected by them, yet to a certain extent, at least, are left open to their consideration before they are passed. That this would not be without precedent, I might refer to the course pursued when the extensive alterations were effected in the practice of the Common Law courts under the Law Amendment Act, 3 & 4 W. 4, c. 42, in which instance the proposed rules were published in the periodical publications long before they were issued, and amongst others, in your own work. See 7 L. O., p. 257. To show that instead of any mischief arising from this, but on the contrary, that it has proved highly advantageous in the result, I need only refer to the working of those rules, and the fact that it has not been deemed necessary to make any amendments in them during a period of upwards of ten years. On the other hand, if examples be wanted of the evil arising from a contrary course, amongst other instances in which it has been found necessary to amend general orders of the Court of Chancery, I would refer you to the substitution

of some of the orders of November 1831 for some of the orders of April 1828, and the substitution of some of the orders of April 1842 for some of the orders of May 1841, and the suspension of some of the latter orders before even they came into operation.

I am, Sir,

Yours obediently,

FIAT JUSTITIA.

Nov. 26, 1844.

[We think this suggestion well worthy of consideration. It should be recollected that the solicitors are now the officers of court to carry the orders into effect, and should have ample means of considering them before they come into operation. Besides, these extensive alterations in the practice of the court are more important to the suitors and practitioners than many acts of parliament; and we respectfully ask, therefore, whether they should not be made known *before* they are actually passed? —ED.]

## SUPERIOR COURTS.

*Lord Chancellor.*

[Reported by W. FINNELLY, Esq., Barrister at Law.]

### PRACTICE.—SUPPLEMENTAL BILL.

*A strong case must be made to induce the court to admit evidence into a cause after the hearing and decree.*

*But where it appears that a material piece of evidence contained in a resolution approving of an agreement which the plaintiffs sought to enforce, was withheld by the defendants, and not discovered by the plaintiffs until after the hearing, the court, in its discretion, granted leave to file a supplemental bill in nature of a bill of review.*

THIS was an application for leave to file a supplemental bill in the nature of a bill of review. The Sheffield Canal Company filed a bill to compel the Sheffield and Rotherham Railway Company to perform a contract, by which the railway company engaged to pay an annual sum of 100*l.* towards the repairs of the road from Lady's Bridge to the terminus of the railway. This contract was, as the plaintiffs alleged, contained in four letters to their agent, Mr. Wake. The defendants contended, that before the fourth letter was written the negotiations had been abruptly brought to a close; and the Master of the Rolls adopting this view of the matter, dismissed the bill. After the bill was dismissed, Mr. Wake discovered a resolution of the railway company, adopted at a meeting of the proprietors during the time the negotiations were proceeding, and approving of the proposition to pay the 100*l.* This resolution, as a material piece of evidence, it was now sought to introduce by a supplemental bill; and as one of the reasons for influencing the court to sanction it, the plaintiffs alleged that when the railway company was

ordered to produce the papers and documents relating to the matter in question, they produced their books with the part containing the resolution sealed up, and thereby deprived the plaintiffs of a piece of evidence which would have sustained their case.

Mr. Wakefield and Mr. J. Parker were for the canal company.

Mr. Bethell and Mr. Bacon for the railway company, argued that it was the invariable practice of the court to refuse permission to produce fresh evidence by a supplemental bill, if it appeared that the parties might, by reasonable diligence, have obtained such evidence at the original hearing of the cause. Many of the proprietors of the canal company were proprietors also of the railway company. The resolution was published in the *Sheffield Iris*, which many of them subscribed to; copies of the resolution, to the number of 280, were circulated among the proprietors, and it was next to impossible that Mr. Wake, a solicitor of Sheffield, should not have been acquainted with it, although for some reason that did not appear, he and the proprietors had not thought fit to avail themselves of it.

Mr. Wakefield, in reply, maintained that the defendants ought to have produced the resolution, and all the contest was now about its production. There was no reason why Mr. Wake should not have used it as evidence had he known of it, for it was most material to his case, while there was every reason for the company to conceal it. The justice of the case required that the plaintiffs should be permitted to avail themselves of it, and he hoped the court would not permit any technicalities to stand in the way of an act of substantial justice.

The Lord Chancellor said, it required a very strong case to induce the court to let in new evidence after the hearing of the cause. He would take time to consider the matter.

The Lord Chancellor, now giving his judgment, said, the question was whether a proposal made by Messrs. Bodger and Vickers on the part of the railway company, in their letter of the 29th of June 1836, was rejected by Mr. Wake, the solicitor of the canal company, at the meeting which took place on the same day, or whether it was left open to allow Mr. Wake to consult Lord Wharnccliffe before he finally decided. The Master of the Rolls was of opinion, on the evidence, that the proposal was definitively rejected at the meeting and the treaty closed, and that, as a necessary consequence, the plaintiffs' solicitor could not by afterwards declaring his acceptance of the offer fasten an agreement on the defendants. It was stated in support of the motion for leave to file the supplemental bill, that since the decree at the Rolls had been pronounced, the plaintiffs discovered new and material evidence in support of their case, which if produced at the time of the hearing would have ensured a decree in their favour. That evidence consisted of a report of the directors of the railway,

made at a meeting of the proprietors, and of certain resolutions passed at that meeting adopting the report. As the question depended on what passed at the meeting, the 29th June 1836, the representation of the transaction by the defendants themselves was undoubtedly very material. In the report they stated the proposal, the counter proposition, their rejection of that, and the final acceptance of the proposal. There was no suggestion that the treaty had been broken off, or that the acceptance came too late, but they speak of the matter as something settled and agreed upon, though resting on the correspondence of the solicitors. They say, however, that it must be carried into effect by a formal document, thereby importing that the matter was settled, though informally. No one could doubt that this piece of evidence was most important; but whether if produced at the hearing in connexion with other proofs, it would have led to a different result, was a question which he was not now to decide. It was enough to say it would be a ground for a supplemental bill in the nature of a bill of review, if the court could be satisfied that the evidence was not discovered until after the decree, and that there had been no want of diligence in producing it. It was necessary therefore to ascertain whether the plaintiffs did know of it before the decree, and whether the omission to produce it arose from their own neglect, because if so, they were not, according to the rule of the court, entitled to the relief they sought. It appeared that some of the canal company were proprietors of shares in the railway, and present when the resolution passed. Among those were Marsh and Spencer, who were directors of the railway, and must have known of the report and resolutions, Marsh being also a manager of the canal company in 1840, while the suit was proceeding. No affidavit was made by Parker, who was a member of the committee for years, and his removal to Derby was not a satisfactory reason for the neglect. Marsh also had not joined in the affidavit. He could not have done so, as he was one of the railway company by whom the report was presented. The affidavits stated that the deponents were not aware, nor were any of the canal proprietors aware of the report till after the judgment. The report and resolutions were, however, printed in the *Iris* newspaper, published in Sheffield, and to this paper some of the proprietors were subscribers, and they attended the newsrooms where the paper was taken in. Copies of the report were also sent by post to the proprietors. It seemed, therefore, very improbable that none of these persons knew of the report, but as the passage now in question formed but a small portion of the report, it was not unreasonable to suppose it might have escaped their recollection after such a considerable interval of time. With respect to the solicitor of the canal company, Mr. Wake, it was asserted that he alluded to the report in a conversation with Messrs. Bodger and Vickers, but Mr. Wake is since dead, and his son swore positively that no entry was

to be found in his father's books of any meeting with Mr. Bodger on the subject. It seemed therefore probable and reasonable to infer, that the report was not in the recollection of Mr. Wake when the bill was filed, and that he did not recollect it in the progress of the cause; for it would be difficult to account in any other way for his not making it a part of the case. The omission was the more remarkable, as the bill referred to a report presented to the canal company, in which the agreement was stated. In the absence, however, of any direct evidence to impeach the statement of Mr. Bodger, confirmed as it was by his partner, Mr. Vickers, his Lordship could not allow these inferences to outweigh his direct and positive testimony on the subject. The discovery of the report too, was singular, as Mr. Wake stated, it was left at his office in Sheffield during his absence, by a person he did not know. This was unsatisfactory, as he ought to have stated in his affidavit a reason for not giving the evidence of this person as to the circumstances of the discovery. This view of the matter would have led to the conclusion that the motion, according to the practice of court, ought not to be granted; but there was a circumstance in the case that during the whole discussion pressed strongly on his Lordship's mind: it was the duty of the defendants to enter the report in the books of the company, according to the provisions of the act of parliament. Had they done so, the plaintiffs would have had the benefit of the entry, and the consequences of any neglect or mistake on the part of the solicitors would have been obviated. No satisfactory reason had been assigned for the omission. His Lordship thought, therefore, that he should exercise a sound discretion in allowing the supplemental bill to be filed.

*The Sheffield Canal Company v. The Sheffield and Rotherham Railway Company.* Nov. 6, 1844.

#### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### PLEADING. — DEMURRER FOR WANT OF EQUITY.

*Where a bill is filed for specific performance of an agreement for a lease, and to restrain proceedings in an ejectment brought to recover possession of the premises agreed to be demised, a demurrer for want of equity will not lie because the bill does not pray an injunction against the party actually interested in the property, if the bill contain sufficient allegations to show that he is making use of the names of the parties in the ejectment sought to be restrained.*

THIS bill was filed by the plaintiff for the specific performance of an agreement for a lease of 20 acres of land adjoining a colliery in the pleadings mentioned, and to restrain the defendants, Chayter and Gill, from proceeding with an ejectment brought by them to recover possession of the land in question. The cir-

cumstances under which the plaintiff claimed to be entitled were as follow: In the year 1837, a company was formed called the Hunwick Coal Company, which consisted of Messrs. Botcherby, Brown, and Allison, and several other persons; and a lease of the colliery, which was afterwards worked by the company, was taken by Allison, in trust for himself and his copartners, Botcherby, Brown, and Allison were also partners, with others, in the Byers Green Coal Company, and Allison, on behalf of this company, entered into an agreement with the defendant, Sir William Chayter, for the purchase of an estate called the Newfield estate, which adjoined the Hunwick Colliery, for 6,500*l.*; and on the 2nd of May, 1840, a conveyance was executed of this estate to Allison, in trust, as was alleged, for the Byers Green Company, but was not delivered over, in consequence of the whole of the purchase money not being paid. In August 1839, Botcherby, Brown, and Allison, on behalf of the Hunwick Coal Company, contracted with the Byers Green Company for the purchase of 20 acres of the Newfield estate, for 1,000*l.* This purchase money was paid, and Botcherby, Brown, and Allison agreed to grant a lease of the 20 acres to the Hunwick Coal Company for the residue of the lease held by them of the Hunwick Colliery. No formal agreement was drawn up, but buildings were erected on the land by the Hunwick Coal Company, and it was used by them in working their colliery until January 1842. The Hunwick Coal Company having got into difficulties, their colliery was, in April 1842, put up to sale, under an attachment issued against them for 4,000*l.*, and purchased by the plaintiff for 1,850*l.*, and a bill of sale was executed to him, under which he entered into possession of the colliery, including the 20 acres, and continued in peaceable possession until the ejectments were brought by the defendants Chayter and Gill, which this bill sought to restrain, the defendant Gill claiming title under a conveyance executed to him by Allison, in May 1843, in which it was recited that he had given Allison three notes for 266*l.* 13*s.* 4*d.*, payable at one, two, and three years. Allison was declared a bankrupt in July 1843; and Baugh and Baker, two of the defendants to this bill, were appointed his assignees. The bill charged that the conveyance to Gill was collusive, and that the notes were never intended to be paid; and prayed that the defendants Chayter and Gill might be restrained from proceeding in the ejectment; that the plaintiff might be declared entitled to the lease contracted for by him of the 20 acres; and that the defendants might be decreed to execute a lease of that land, in pursuance of the agreement for that purpose with the Hunwick Coal Company. To this bill a general demurrer was put in by the defendant Gill, for want of equity.

*Kindersley and Bates* for the defendant Chayter, and *Cooper and Hubback* for the defendant Gill, in support of the demurrer said,

the bill prayed that Sir William Chayter and Gill might be restrained from proceeding in the ejectments, and yet it was stated that the actions were in fact brought by Allison. If they were Allison's actions, then the bill should have prayed that Allison might be restrained from proceeding, or from using the names of the defendants, Chayter and Gill.

Turner and Anderson, contra, said, that the plaintiff asked for a specific performance of his agreement, and to restrain further proceedings in the ejectments. Botcherby, Brown, and Allison were equitable owners of the twenty acres by agreement, for purchase from the Byers Green Company, and they were equitable owners by agreement for purchase from Sir William Chayter. Allison contracted for the grant of the lease to the Hunwick Coal Company, and that was vested in the plaintiff by purchase from the sheriff. The statement in the bill was, that Sir William Chayter was not proceeding for his own purposes, but allowed his name to be used by Allison.

The Master of the Rolls said he must overrule the demurrer. There might have been some difficulty in restraining Sir William Chayter from proceeding on his own account; but the allegation was, that he was allowing his name to be used by Allison, and if the demurrer were allowed, he must give leave to amend. It became, therefore, only a question of costs, and as he did not think it a demurrer to be disapproved of, considering the state of the circumstances, he would not allow costs to either party.

*Gibson v. Chayter.* Nov. 15th and 16th, 1844.

#### Vice-Chancellor of England.

Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### RIGHTS OF TENANT FOR LIFE.—IMPEACHMENT FOR WASTE.

*Where timber is cut during the life of a tenant for life impeachable for waste, the next tenant for life, if unimpeachable for waste, is entitled to the produce.*

THIS was the petition of Sir William Owen, for payment to him of a sum of 7,000*l.*, which had arisen from the sale of certain timber cut during the existence of a preceding tenancy for life, upon certain estates of which Sir William was the present tenant for life. The timber was properly cut, pursuant to an order of the court, but the then tenant for life being impeachable for waste, according to the will of the testator by whom the property was devised, had no claim to the produce. Sir William, therefore, as the owner of the first estate of inheritance unimpeachable for waste, insisted upon his right to the fund, and his claim was opposed by the parties entitled to the estates in remainder in fee, on the ground that the fund must be considered as forming part of the corpus of the estate.

Wilson and Stinton, for the petitioner, said,

the case was exactly within the principle established in *Waldo v. Waldo*, 12 Sim. 107, where it was held, that if by the act of the court, or the act of a trustee out of court, which the court has adopted, timber, which is part of the inheritance, has been converted into censols, and the court has dealt with the fund as representing the inheritance, when the estate of the person in remainder comes into possession in the shape of an estate for life unimpeachable for waste, the person having that estate is entitled to take that portion of the inheritance which is represented by the proceeds of the timber cut. They cited also *Smallman v. Onions*, 3 Bro. C. C. 620; *Twort v. Twort*, 16 Ves. 128.

*Bethell and Glasco*, for the parties entitled in remainder in fee, insisted that the money produced by sale of the timber formed part of the corpus of the estate, and must go with the inheritance; and as the whole fee simple of the estate was vested in trustees, they were trustees also of the timber, and must deal with it in the same manner as they dealt with the inheritance, viz., by allowing the tenant for life to receive the interest on the produce during the continuance of his estate. *Piggott v. Bullock*, 1 Ves. J. 484; *Tooker v. Annesley*, 5 Sim. 235.

The Vice-Chancellor said, that this case did not appear to him in substance distinguishable from the case of *Waldo v. Waldo*. The bill was filed by the person who was the reversioner in fee of the estate, against Mrs. Barlow, who was first tenant for life, with impeachment of waste, and against the tenant for life in remainder, who was unimpeachable for waste. There was a decree in the cause, and a reference made to the Master, and by the first decree liberty was given to apply; and when the cause was again heard, on the supplemental bill, liberty was again given to apply. His Honour said he mentioned that, because it had been suggested by Mr. Bethell, in the argument, that there might be a difficulty in proceeding in this matter on petition. His Honour then stated the case of *Waldo v. Waldo*, and added: "When you find a decision has been treated in a certain manner all along, and that there has been no appeal, it must be treated as a precedent in considering the case again. I am, therefore, the more satisfied that what was done in that case was right; and as I find nothing in the present case to distinguish it in substance from *Waldo v. Waldo*, my opinion is, that the fund in court should be paid out to the petitioner, as any other order would be manifestly unjust."

*Phillips v. Barlow*, November, 1844.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### ACTION AGAINST AN ATTORNEY FOR NEGLIGENCE.—PRACTICE OF THE COURT.—EVIDENCE FOR THE JURY.

*Where an action was brought against an at-*

*torney for negligence in omitting to file certain writs pursuant to the statute 2 W. 4, c. 39, s. 10, whereby the plaintiff's claim was barred by the statute of limitations, the learned judge left it to the jury to decide on the evidence given of the practice of the court, and on all the circumstances of the case, whether the defendant had been guilty of gross negligence in conducting the business, and a verdict was found for the plaintiff: Held, that as the question of negligence was of a doubtful kind, and could hardly be justified under the circumstances, the court granted a new trial.*

*The declaration alleged the negligence of the defendant to be in omitting to file the said writs according to the practice of the court, the words of the statute are that the writs shall be entered of record. Quere, whether the words entered of record, imply filing, so as to support the allegation in the declaration, or whether it is not a good ground in arrest of judgment.*

*In an action of this kind, the practice of the court is matter of evidence, the effect of which should be submitted to the consideration of the jury.*

In the year 1833 the plaintiff brought an action against one George Hicks, on a bill of exchange, and obtained a verdict. The present defendant was the attorney, who, in that action, conducted the case for the plaintiff. Hicks absconded, and writs, to the number of thirteen, were issued by the defendant under the statute 2 W. 4, c. 39, s. 10,\* to prevent the

operation of the statute of limitations. Two of these writs were irregularly issued, and out of time; the consequence was, that the plaintiff's claim was barred by the statute of limitations. The present action was brought against the attorney for negligence in not using due care and diligence in preventing the operation of the statute of limitations, whereby the plaintiff lost all benefit of the judgment he had obtained on the bill of exchange. The declaration charged the defendant with want of due care and diligence in conducting the suit of the plaintiff, and then went on to allege that the defendant would not file the said writs according to the general practice of the court. At the trial contradictory evidence was given as to what was the general practice of the court with respect to these writs, and the learned judge left it for the jury to decide on all the facts of the case, whether the defendant had been guilty of gross negligence in the manner in which he had conducted the plaintiff's business. The jury found a verdict for the plaintiff for the full amount of the bill of exchange. A rule was afterwards obtained either to set aside the verdict, and have a new trial, on the ground of misdirection of the learned judge, or to arrest the judgment.

Mr. Crowder and Mr. Ball showed cause.

The question of negligence is one properly for the consideration of a jury. It was left by the learned judge for the jury to decide whether, under all the circumstances of the case, the defendant had been guilty of negligence and want of proper care in conducting the case for the plaintiff. There can, therefore, be no reason for disturbing the verdict on the ground of misdirection.

The motion in arrest of judgment depends on the construction the court will put on the words of the statute 2 W. 4, c. 39. The declaration charges the defendant with omitting to file the writs according to the practice of the court. The 10th section requires the writs to be entered of record, but does not mention the word filing. The words entered of record must necessarily mean filing, because the writs must be filed before they are entered of record. It is the duty of the attorney to take the writs to the proper office, and then it is the duty of the officer of the court to enter them of record. The attorney cannot enter the writs of record. Filing can only mean giving them into the hands of the proper officer, the same as filing a declaration or an affidavit. The defendant must show that the writs were left at the office in due time. He has failed to do so. The evidence is clear on that point, that the writs were not left at the office. All the works on practice use the same language, and give the same directions to attorneys.

The Solicitor General (Sir F. Thesiger) and Mr. Rawlinson contra.

The fact of negligence consists of two questions,—the one the construction of an act of parliament, and the other the practice of the court. These are both questions for the consideration of the learned judge, and he should

\* Section 10 enacts that no writ issued by the authority of this act shall be in force for more than four calendar months from the day of the date thereof, including the day of such date, but every writ of summons and capias may be continued by alias and pluries, as the case may require, if any defendant therein named may not have been arrested thereon, or served therewith: Provided always, that no first writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, unless the defendant shall be arrested thereon or served therewith, or proceedings to or toward outlawry shall be had thereupon, or unless such writ, and every writ (if any) issued in continuation of a preceding writ, shall be returned *non est inventus*, and entered of record within one calendar month next after the expiration thereof, including the day of such expiration, and unless every writ issued in continuation of a preceding writ, shall be issued within one such calendar month after the expiration of the preceding writ and shall contain a memorandum indorsed thereon or subscribed thereto, specifying the day of the date of the first writ; and return to be made in bailable process by the sheriff or other officer to whom the writ shall be directed, or his successor in office and in process not bailable, by the plaintiff or his attorney suing out the same, as the case may be.

have directed the jury whether the conduct of the defendant amounted to negligence in point of law. *Kemp v. Burt*,<sup>b</sup> *Bulmer v. Gilman*,<sup>c</sup> *Doorman v. Jenkins*.<sup>d</sup>

In the last case, *Taunton, J.*, says—"There may be cases where the question of gross negligence is matter of law more than of fact, and others where it is matter of fact more than of law. An action brought against an attorney for negligence turns upon matter of law rather than fact. It charges the attorney with having undertaken to perform the business properly, and alleges that, from his failure to do so, such and such injuries resulted to the plaintiff. Now, in nineteen cases out of twenty, unless the court told the jury that the injurious results did, in point of law, follow from the misconduct of the defendant, they would be utterly unable to form a judgment on the matter." As to the practice of the court being matter of law, it is laid down in *Com. Dig.*<sup>e</sup> "the course of the court is the law of the court. And the judges will generally take notice of the course and law of every court." *Barkin v. Chandless* was an action against an attorney for negligence in the purchase of an annuity deed. Lord Ellenborough says—"An attorney is only liable for *crassa negligentia*; and it is impossible to impute that to the defendant for not discovering the defect in the memorial of an annuity, which was subsequently held to be a defect upon a very doubtful construction of the statute."

The judgment ought to be arrested, on the ground that the declaration does not disclose any negligence on the part of the defendant; it merely alleges that the defendant did not file the writs with the proper officer, according to the practice of the court. The statute directs that the writs shall be entered of record, which is a distinct provision from filing the writs. The practice in these matters is different now from what it was when the action was brought against Hicks. There is now only one office for filing the writs and entering them of record. There were formerly two offices for this purpose, called the outer and inner treasury. The allegation, therefore, in the declaration, that the defendant did not file the writs, does not form part of the requisites of the act of parliament.

Lord Denman, C. J., said that this was an action against an attorney for alleged negligence in not filing certain writs and entering them. The court was of opinion that there must be a new trial at all events, as the court thought that the strong opinion formed and expressed by the jury, that there had been gross negligence, could hardly be justified in a matter which appeared one of a doubtful kind of negligence. It might ultimately happen, should another verdict pass for the plaintiff, that the

court would be called on to inquire whether the judgment ought not to be arrested, but on that point the court did not intend now to express any opinion. It was plain that this was a matter of practice, and that in an action of this kind what was the practice was a matter of evidence. The effect of that evidence might be mistaken, but still it was something which must be left to the jury.

Rule for a new trial absolute.

*Hunter v. Caldwell*. Queen's Bench, Michaelmas Term, 1844.

### Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

LANDLORD AND TENANT. — PROCEEDING UNDER 1 GEO. 4, c. 87, s. 1.—AFFIDAVIT. — PRACTICE.

*An affidavit in support of a rule under the 1 Geo. 4, c. 87, s. 1, stating that the tenancy was determined "by a certain notice to quit," instead of "by a regular notice to quit," is insufficient.*

*Where the affidavit makes reference to the agreement required by the statute, and the agreement itself is certified under the hand of the commissioner administering the oath, the instrument is sufficiently identified.*

*Prendergast* had obtained a rule calling on the tenant to show cause why he should not give the undertaking and enter into the recognizance required by the 1 Geo. 4, c. 87, s. 1, which authorizes this mode of proceeding where the term or interest of any tenant holding under a lease, or agreement in writing, any lands, &c. for any term or number of years certain, or from year to year, shall have expired or been determined, either by the landlord or tenant, by regular notice to quit; and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made thereof.

*Simon* appeared to show cause, and objected to the sufficiency of the affidavit on which the rule had been obtained, on two grounds: First, that it was defective in not sufficiently identifying the agreement in writing required by the statute, the language of the affidavit being, "by virtue of an agreement produced to deponent at the time of swearing this affidavit;" whereas the agreement ought to have been set out in the affidavit according to the form given in *Archbold's Forms*, p. 402, 5th edition; or the words "and exhibited" should have been added. [*Patteson, J.*—The instrument is left in the office of the court; it is referred to by the affidavit, and marked by the commissioner; and you might have taken an office copy just as if it had been annexed: that is sufficient.] Secondly, it is not stated that the interest of the tenant has been determined by a regular notice to quit, the words of this

<sup>b</sup> 4 B. and Ad. 424.

<sup>c</sup> 4 Man and Granger, 108.

<sup>d</sup> 2 A. and E., 256.

<sup>e</sup> Com. Dig. Court Q.



affidavit being "when his tenancy as such tenant from year to year was determined by a certain notice to quit given to the said *John Bell*." Such a mode of statement is clearly insufficient. The word "regular" is indispensable, and its omission is fatal. *Doe d. Topping v. Boast*, 7 D. P. C. 487.

*Patteson, J.*—The last objection must prevail. The rule must be discharged.

*Prendergast* requested permission to renew the application on an amended affidavit.

*Patteson, J.*—No; this defect is not such as to take the case out of the ordinary rule, that a party must come with proper materials in the first instance.

Rule discharged without costs.

*Doe d. Platter v. Bell*. Q. B. P. C. M. T., 1844.

### Exchequer.

Before Alderson, B.

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

#### AFFIDAVIT.—NONSUIT.—VENUE.

*An affidavit in support of a rule for judgment, as in case of a nonsuit, need not state where the venue is laid, if it appear that issue was joined at such a period, that the application is not premature whether the cause be a town or country cause.*

*Hurlstone* moved for a rule nisi, for judgment as in case of a nonsuit. The affidavit in support of the application stated, that issue was joined on the 12th of December last, but it did not appear whether this was a town or country cause. There was some doubt whether the affidavit was sufficient, as it would seem from the observations of the Court of Common Pleas in *Withers v. Spooner*, 2 Dowl. N.S., 884, that the affidavit ought, in all cases, to state where the venue was laid.

*Alderson, B.* As issue was joined in December last the defendant is entitled to move for judgment as in case of a nonsuit, whether this was a town or country cause; it is, therefore, unnecessary to state where the venue is laid.

Rule nisi.

*Anslow v. Cooper*. Exchequer, M. T., Nov. 12, 1844.

### CHANCERY SITTINGS.

Lord Chancellor.

After Michaelmas Term, 1844.

AT LINCOLN'S INN.

Monday	Dec. 2	{ The 1st Seal—Appeal Motions.
Tuesday	3	
Wednesday	4	{ Appeals.
Thursday	5	

Friday	6	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday	7	
Monday	9	{ The 2nd Seal—Appeal Motions
Tuesday	10	
Wednesday	11	{ Appeals.
Thursday	12	
Friday	13	{ The 3rd Seal—Appeal Motions.
Saturday	14	
Monday	16	{ (Petition-day) Unopposed Petitions and Appeals.
Tuesday	17	
Wednesday	18	{ Appeals.
Thursday	19	
		{ The 4th Seal—Appeal Motions.
		{ Petition-day.

#### Master of the Rolls.

Thursday	Nov. 28	{ At the Privy Council.
Friday	29	
Saturday	30	{ At the Rolls—Motions.
Monday	Dec. 1	
Tuesday	3	{ Ditto—Petitions—The Unopposed First.
Wednesday	4	
Thursday	5	{ At the Privy Council.
Friday	6	
Saturday	7	{ At the Rolls—Motions.
Monday	9	
Tuesday	10	{ At the Rolls—Petitions—The Unopposed First.
Wednesday	11	
Thursday	12	{ At the Privy Council.
Friday	13	
Saturday	14	{ At the Rolls—Motions.
Monday	16	
Tuesday	17	{ At the Privy Council.
Wednesday	18	

Consent Causes and Short Causes every Tuesday at the sitting of the court.

Notice.—Petitions may be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

#### Vice-Chancellor of England.

Monday	Dec. 2	{ The 1st Seal—Motions.
Tuesday	3	
Wednesday	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	5	
Friday	6	{ (Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday	7	
Monday	9	{ The 2nd Seal—Motions.
Tuesday	10	
Wednesday	11	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	12	
Friday	13	{ The 3rd Seal—Motions.
Saturday	14	
Monday	16	{ (Petition-day) Unopposed Petitions, Short Causes and Causes.
Tuesday	17	
		{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Wednesday . . . 18	The 4th Seal—Motions.
Thursday . . . 19	Petition-day.
Friday . . . 20	Unopposed Petitions, and Short Causes, at the head of paper.

Thursday . . . 19	(Petition-day) Petitions and Causes.
Friday . . . 20	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Saturday . . . 21	Short Causes and Causes.

Vice-Chancellor Knight Bruce.

Tuesday Nov. 26	Bankrupt Petitions.
Wednesday . . . 27	
Thursday . . . 28	
Monday . Dec. 2	The 1st Seal—Motions and Causes.
Tuesday . . . 3	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Wednesday . . . 4	Bankrupt Petitions and Ditto.
Thursday . . . 5	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . 6	(Petition-day) Petitions and Causes.
Saturday . . . 7	The 2nd Seal—Motions, Short Causes, & Causes.
Monday . . . 9	Bankrupt Petitions & Causes.
Tuesday . . . 10	Pleas, Demurrers, Exceptions, Causes, and Fur. Directions.
Wednesday . . . 11	Bankrupt Petitions & Ditto.
Thursday . . . 12	The 3rd Seal—Motions and Causes.
Friday . . . 13	(Petition-day) Petitions and Causes.
Saturday . . . 14	Short Causes and Causes.
Monday . . . 16	Bankrupt Petns. & Causes.
Tuesday . . . 17	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Wednesday . . . 18	The 4th Seal—Motions and Bankrupt Petitions.
Thursday . . . 19	(Petition-day) Petitions and Causes.
Friday . . . 20	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Saturday . . . 21	Short Causes and Causes.

Vice-Chancellor Stirling.

Monday Dec. 2	The 1st Seal—Motions and Causes.
Tuesday . . . 3	Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Wednesday . . . 4	Causes, and Fur. Directions.
Thursday . . . 5	(Petition-day) Ditto.
Friday . . . 6	The 2nd Seal—Motions, Short Causes, Petns. (unopposed first) & Causes.
Saturday . . . 7	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 9	The 3rd Seal—Motions and Causes.
Tuesday . . . 10	(Petition-day) Pleas, Demrs., Exons., Causes, and Further Directions.
Wednesday . . . 11	Short Causes, Petitions (unopposed first,) and Causes.
Thursday . . . 12	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Friday . . . 13	The 4th Seal—Motions and Causes.
Saturday . . . 14	Pleas, Demrs., Exceptions, Causes, and Fur. Dirs.
Monday . . . 16	The 4th Seal—Motions and Causes.
Tuesday . . . 17	
Wednesday . . . 18	

MASTERS EXTRAORDINARY IN CHANCERY.

From Oct. 22nd to Nov. 22nd, 1844, both inclusive, with dates when gazetted.

Bathurst, Richard, Faversham, Kent. Nov. 8.  
Turton, William, Turnstall, Stafford. Nov. 19.

DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.

From Oct. 22nd to Nov. 22nd, 1844, both inclusive, with dates when gazetted.

Annesley, George, and Compton Reade, 64, Lincoln's-Inn Fields, Attorneys, Solicitors, and Conveyancers. Nov. 5.  
Ayre, William, jun., and John Saxelbye, Attorneys and Solicitors, Kingston-upon-Hull. Nov. 1.  
Bignold, Thomas, and Edward Field, Attorneys and Solicitors. Nov. 12.  
Chorlton, Samuel, and John Boothroyd, Attorneys and Solicitors, Stockport, Runcorn and Birkenhead, Chester. Nov. 22.  
Clarke, Henry, and Thomas Tudor Trevor, Attorneys and Solicitors, Guisborough, York. Nov. 19.  
Day, George Game, and William Nainby Swallow, St. Ives, Huntingdon, Attorneys, Solicitors, and Conveyancers. Oct. 29.  
Fisher, Robert, sen., Robert Fisher, jun., and William Washbourne, Newport, Salop, Attorneys and Solicitors. Nov. 8.  
Fisher, Robert, sen., and Robert Fisher, jun., Newport, Salop, Attorneys and Solicitors. Nov. 8.  
Humphreys, W. C. C., and W. T. Gawthorp, 67, Newgate Street, Attorneys and Solicitors. Nov. 8.  
Walker, James William Connor, and Thomas Martin Havant, Southampton, Attorneys and Solicitors. Nov. 1.  
Winder, John, and John Latham, Chorley, Lancaster, Attorneys, Solicitors, and Conveyancers. Nov. 15.

BANKRUPTCIES SUPERSEDED.

From Oct. 22nd to Nov. 22nd, 1844, both inclusive, with dates when gazetted.

Goock, Thomas, 5, Dalston Terrace, West, and of 215, Whitechapel, Timber Merchant. Nov. 8.  
Hall, John, and Samuel Vincent, St. Mary Axe, Wholesale Tea and Coffee Dealers. Nov. 19.  
Herling, John, (late of Mildop, Gisburn, York,) Farmer, Grazier, and Wool Buyer. Oct. 29.  
Wilde, John Thomas, and William Wilde, (late of 18, Basing Lane, Cheapside,) General Dealers. Nov. 12.  
Wood, Jacob, and William Norton, Fenay Bridge, Kirkheaton, York, Fancy Cloth Manufacturers. Nov. 8.

## BANKRUPTS.

From 22nd Oct. to 22nd Nov. 1844, both inclusive, with dates when gazetted.

- Argent, Isaac, 15, Fleet Street, Victualler. *Johnson*, Off. Ass.; *Cooke*, 30, King Street, Cheap-side. Nov. 15.
- Ashman, James, St. Michael's, Bath, Innkeeper. *Kynaston*, Off. Ass.; *Shattock*, 2, Nicholas Street, Bristol. Oct. 22.
- Barwick, James Frederick, Old Street, St. Luke's, Wheelwright. *Graham*, Off. Ass.; *Lawrence & Co.*, Old Fish Street. Nov. 15.
- Barry, Robert, Royal Baths, Worthing, Sussex, Lodging-house Keeper. *Johnson*, Off. Ass.; *Hillier & Co.*, Gray's Inn; *Tribe & Co.*, Worthing. Nov. 15.
- Bate, George, Birmingham, Warwick, (late of Forton Hall Farm,) Forton, Stafford, Horse Dealer. *Christie*, Off. Ass.; *Motteram*, Bennett's Hill, Birmingham. Nov. 8.
- Bates, James Davis, (late of 2, Lower Chapman Street, St. George's, East,) Ginger Beer, Soda Water, and Blacking Manufacturer. *Turquand*, Off. Ass.; *Taylor*, North Buildings, Finsbury. Nov. 12.
- Benson, Thomas, 12, North Place, Gray's Inn Road, and of 108, Gray's Inn Lane, Stationer and Account Book Maker. *Graham*, Off. Ass.; *Badham & Co.*, Gray's Inn. Oct. 29.
- Blundell, Francis, New Sarum, Wilts, Grocer and Tea Dealer. *Johnson*, Off. Ass.; *Sanger*, Essex Court, Temple. Nov. 22.
- Blythe, Frederick Edmund, Colchester, Essex, Porter Merchant. *Turquand*, Off. Ass.; *Ogle & Co.*, Great Winchester Street. Nov. 8.
- Bones, Christopher, Bath, Shoemaker and Cord-wainer. *Acraman*, Off. Ass.; *Mogg & Co.*, Cholwell, near Bristol. Nov. 19.
- Boulter, Thomas, Tucker's Hotel, Cromer, Norfolk, Innkeeper. *Edwards*, Off. Ass.; *Brooksbank & Co.*, Gray's Inn; *Staff*, Norwich. Nov. 15.
- Bourne, John George, Battersea, Surrey, Builder. *Green*, Off. Ass.; *Pain & Co.*, Great Marlborough Street. Nov. 15.
- Bragg, Henry, Montague Close, Southwark, Bottle Merchant. *Graham*, Off. Ass.; *Ashley*, Shore-ditch. Nov. 5.
- Bridick, William Barrett, Durham, Dealer in Iron and Steel. *Wakley*, Off. Ass.; *Hartley*, Bloomsbury; *Brignal*, Durham. Nov. 1.
- Bridick, Joseph, jun., Durham, Bookseller and Stationer. *Baker*, Off. Ass.; *Hodgson*, Broad Street Buildings; *Maynard & Co.*, Durham. Nov. 8.
- Broadbent, Joseph, Kexby, Lincoln, Wheelwright and Carpenter. *Hope*, Off. Ass.; *Rogerson*, Lincoln's Inn Fields; *Howlett*, Kerton-in-Lindsey; *Payne & Co.*, Leeds. Nov. 19.
- Brooke, William, late of Mincing Lane, Coffee Dealer and Broker, and late of Snow Hill, Ale Housekeeper and Coffee Shopkeeper. *Turquand*, Off. Ass.; *Wood & Co.*, Falcon Street, Aldersgate Street. Nov. 1.
- Brookes, William, 13, Gilbert Street, Grosvenor Square, Grocer. *Johnson*, Off. Ass.; *Comyn*, Lincoln's Inn Fields. Nov. 8.
- Broome, William, and William Hardy, Oxford Street, Drapers. *Groom*, Off. Ass.; *Reed & Co.*, Friday Street, Cheapside. Oct. 22.
- Broome, William, 158, Oxford Street, Linen Draper, (as a trader indebted jointly with William Hardy of the same place.) *Groom*, Off. Ass.; *Sole & Co.*, Aldermanbury. Oct. 22.
- Burgess, John, Cratfield, Suffolk, Farmer and Cattle Dealer. *Pennell*, Off. Ass.; *Holmes & Co.*, Great James Street, Bedford Row. Nov. 22.
- Burrows, Joseph Seret, Wimbledon, Surrey, Coal Merchant. *Graham*, Off. Ass.; *Ogle*, Great Winchester Street. Nov. 12.
- Carter, James Watson, 120, Long Acre, Coach Plater and Ironmonger. *Johnson*, Off. Ass.; *Baumont & Co.*, Lincoln's-Inn-Fields. Oct. 25.
- Cash, Charles, Whitechapel Road, Ironmonger. *Groom*, Off. Ass.; *Capes & Co.*, 1, Field Court, Gray's Inn; *Clark*, Wolverhampton. Nov. 19.
- Chandler, William, 95, Minories, Chemist and Druggist. *Turquand*, Off. Ass.; *Shearman & Co.*, Great Tower Street. Nov. 1.
- Clark, John, Brunswick Cottage, City Road, Carman. *Green*, Off. Ass.; *Tucker & Co.*, Sun Street Chambers. Nov. 5.
- Clearer, Joseph, junr., Coventry, Victualler. *Valpy*, Off. Ass.; *Troughton & Co.*, Coventry. Nov. 5.
- Collinson, William, East Butterwick, Lincoln, Shipwright and Carpenter. *Freeman*, Off. Ass.; *Howlett*, Kirkton-in-Lindsey; *Payne & Co.*, Leeds. Nov. 15.
- Colville, John, and Hugh Colville, Liverpool, Merchants. *Morgan*, Off. Ass.; *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. Nov. 15.
- Cooley, Mary, Spalding, Lincoln, Tailor and Draper. *Valpy*, Off. Ass.; *Maples*, Spalding; *Sincoe & Co.*, Bull Ring, Birmingham. Oct. 22.
- Cooper, Thomas, 33, Aldgate High Street, Coffee and Eating-House keeper. *Follett*, Off. Ass.; *Sprigge*, Upper North Place, Gray's Inn Road. Nov. 19.
- Cottrill, Edwin, Redditch, Worcester, Linen Draper. *Valpy*, Off. Ass.; *Jones*, Size Lane; *Motteram*, Bennet's Hill, Birmingham. Nov. 15.
- Cox, John, Norwich, Cabinet Maker and Upholsterer. *Follett*, Off. Ass.; *Wood & Co.*, Falcon Street, Aldersgate Street; *Durrant*, Norwich. Nov. 12.
- Craven, Joseph, Thornes, Wakefield, and John Hardman, Solicitor, Rochdale, Lancaster, Dyers. *Hope*, Off. Ass.; *Sudlow & Co.*, Chancery Lane; *Bakswell*, Wakefield. Nov. 19.
- Craven, Joseph, Holme Dye Works, Wakefield, York, John Hardman, Rochdale, Lancaster, Solicitor, and George Craven, junr., Rochdale, Dyers. *Young*, Off. Ass.; *Gregory & Co.*, Bedford Row; *Taylor & Co.*, Wakefield. Nov. 19.
- Crosfield, Thomas, sen., Kirkham, Lancaster, Linen Draper and Spirit Merchant. *Fraser*, Off. Ass.; *Corrathwaite & Co.*, 14, Old Jewry Chambers; *Fisher & Co.*, Liverpool. Nov. 5.
- Davidson, Gordon Forbes, (formerly of Singapore, East Indies, Merchant, late of Hong Kong, China, Merchant, now of John Street, Adelphi.) *Graham*, Off. Ass.; *Oliverson & Co.*, Old Jewry. Nov. 15.
- Dogood, Henry John, 3, Camden Terrace West, Wine and Porter Merchant. *Follett*, Off. Ass.; *Ross*, Bernard's Inn. Nov. 8.
- Dore, William Luke, King's Head Inn, Egham, Surrey, Innkeeper. *Green*, Off. Ass.; *Oliverson & Co.*, Frederick's Place, Old Jewry. Nov. 15.
- Dowding Thomas, Chippenham, Wilts, Brewer.

- Acraman*, Off. Ass.; *Ieman*, Bristol. Nov. 15.
- Eaton*, Richard, 35, Featherstone Street, City Road, Butcher. *Bell*, Off. Ass.; *Taylor & Co.*, 3, Finchbury Terrace, City Road. Nov. 5.
- Ekrey*, William, Aldermanbury, Silk Dresser and Manufacturer. *Graham*, Off. Ass.; *Jones*, Size Lane. Nov. 8.
- Eccles*, Samuel, and Charles Ridings, Manchester, Cotton Worsted and Linen Manufacturers. *Pett*, Off. Ass.; *Barlow & Co.*, Manchester. Nov. 22.
- Elliott*, Ralph, Durham, Draper. *Graham*, Off. Ass.; *Ashurst*, Cheapside. Oct. 29.
- Fitzhugh*, William Henry, and Robert Edwards Walker, Liverpool, Merchants and Ship Brokers. *Morgan*, Off. Ass.; *Bridger & Co.*, London Wall; *Dodge*, Liverpool. Nov. 5.
- Flaherty*, Thomas, Bath, Tailor and Draper. *Miller*, Off. Ass.; *Whittington & Co.*, Bristol. Oct. 22.
- Flower*, Alfred, Leamington Priors, Warwick, Carpenter and Builder. *Bittleston*, Off. Ass.; *Russells & Co.*, Leamington Priors. Oct. 25.
- French*, Peter, Worthing, Sussex, Carpenter and Straw Bonnet Maker. *Johnson*, Off. Ass.; *Hicks & Co.*, Gray's Inn. Oct. 29.
- Gibson*, Henry Gould, (late of Great St. Helen's, Bishopsgate Street, now of Northaw, Potter's Bar, Hereford,) Wine Merchant. *Bell*, Off. Ass.; *Hughes*, Bedford Street, Covent Garden. Nov. 8.
- Goldsworthy*, Thomas, (late of 75, Old Broad Street, and now of Clifton Villas, Maida Vale,) Merchant. *Graham*, Off. Ass.; *Lawrence & Co.*, Becklersbury. Nov. 1.
- Gould*, John, Congresbury, Somerset, Cattle Salesman. *Acraman*, Off. Ass.; *A'Beckett & Co.*, Golden Square. Oct. 25.
- Harvey*, Samuel, East Mersea, Essex, Cattle and Sheep Dealer. *Green*, Off. Ass.; *Marriott*, 7, New Inn, and Colchester. Nov. 19.
- Harvey*, Catherine Sarah, 5, George Street, Hanover Square, Dress Maker. *Bell*, Off. Ass.; *Chipperton & Co.*, Bedford Row. Nov. 19.
- Higgins*, William, and Thomas Higgins, Old Bond Street, Hosiers and Glovers. *Bell*, Off. Ass.; *Thomas & Co.*, Cloak Lane. Nov. 15.
- Hoggins*, Albany, (late of 5, Lime Street Square, and of Grosvenor Place, Camberwell, now of Apollo Buildings, Walworth,) Merchant. *Groom*, Off. Ass.; *Hutchinson*, Crown Court, Threadneedle Street. Nov. 12.
- Holbein*, Walter, (late of 67, Seymour Street, New Road, St. Pancras, Dealer in Flour. *Turquand*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. Nov. 5.
- Hubbard*, John, High Street, Ramsgate, Auctioneer and Upholsterer. *Groom*, Off. Ass.; *Dyde*, 2, Hare Court, Temple. Nov. 8.
- Jackson*, William, 24, Charlotte Street, Fitzroy Square, Paper Hanger, Painter and House Decorator. *Edwards*, Off. Ass.; *May*, Queen Square. Nov. 22.
- Jacobs*, Mark Israel, Ashton-under-Lyne, Taylor and Draper. *Stanway*, Off. Ass.; *Read & Co.*, Friday Street, Cheapside; *Sale & Co.*, Fountain Street, Manchester. Nov. 5.
- Johnson*, John, Liverpool, Merchant. *Cazenove*, Off. Ass.; *Laces & Co.*, Union Court, Liverpool; *Sharpe & Co.*, 41, Bedford Row. Oct. 29.
- Jones*, Benjamin, Birmingham, Victualler. *Bittleston*, Off. Ass.; *Chilton & Co.*, Chancery Lane; *Suckling*, Union Street, Birmingham. Oct. 25.
- Jones*, James, 69, Berners Street, Oxford Street, Apothecary. *Follett*, Off. Ass.; *Hand*, Chancery Lane. Nov. 12.
- Jones*, William, Usk, Monmouth, Linen Draper. *Hutton*, Off. Ass.; *Sole & Co.*, Aldermanbury; *Haberfield*, Bristol. Nov. 15.
- Kinsey*, Evan, Newtown, Montgomery, Innkeeper and Malster. *Cazenove*, Off. Ass.; *Sargeant*, 10, Norfolk Street, Strand; *Hughes*, Llanidloes, Montgomeryshire; *Evans*, Lord Street, Liverpool. Nov. 12.
- Lawrence*, Joseph, Northampton, Tobaccoconist. *Johnson*, Off. Ass.; *Dods & Co.*, Leadenhall Street. Nov. 19.
- Makepeace*, Samuel, Mitcham, Surrey, Silk, Cotton, and Woollen Printer. *Graham*, Off. Ass.; *Reed & Co.*, Friday Street. Nov. 8.
- Mann*, Thomas, Leicester, Paper Hanger. *Bittleston*, Off. Ass.; *Hodgson*, Cherry Street, Birmingham; *Vincent & Co.*, Temple. Nov. 19.
- Maynard*, James, Pantons Street, Haymarket, Bookseller. *Johnson*, Off. Ass.; *Bennett*, Queen's Square, Bloomsbury. Nov. 8.
- Mitchell*, James, Montague Street, Montague Square, Livery Stable Keeper. *Turquand*, Off. Ass.; *Melton*, Warwick Court, Gray's Inn. Oct. 29.
- Morgan*, Rowland, 13, Ampton Street, Gray's Inn Road, Carpenter. *Bell*, Off. Ass.; *Allen & Co.*, Queen Street, Cheapside. Oct. 29.
- Morris*, Martin, Park Street, St. Augustine, Bristol, Upholsterer and Cabinet Maker. *Miller*, Off. Ass.; *Gillard & Co.*, Bristol Bridge, Bristol. Oct. 29.
- Newton*, William, Bath, Coal Merchant. *Hutton*, Off. Ass.; *Mogg & Co.*, Cholwell, near Bristol. Nov. 22.
- Norwood*, William, Kettering, Northampton, Grocer, and Wine Merchant. *Alsager*, Off. Ass. Nov. 15.
- Oliver*, Herbert, and Henry Hastings, Cheltenham, Butchers. *Kynaston*, Off. Ass.; *Packwood*, Cheltenham. Nov. 12.
- Osborne*, Benjamin, Sheffield, Table Knife Manufacturer. *Fearns*, Off. Ass.; *Ryalls*, Sheffield; *Blackburn*, Leeds; *Moss*, 4, Cloak Lane. Nov. 19.
- Owen*, Barnard Benjamin, and Barnard George Owen, Pall Mall, Tailors. *Turquand*, Off. Ass.; *Edwards & Co.*, New Palace Yard. Oct. 29.
- Owen*, Robert, Manchester, Provision Dealer. *Potts*, Off. Ass.; *Gregory & Co.*, Bedford Row; *Cooper*, Manchester. Nov. 1.
- Palmer*, Robert Ball, Bath, Watchmaker. *Miller*, Off. Ass.; *Silvesthorpe*, Bath; *Kirk*, Symond's Inn. Nov. 19.
- Parry*, Charles, Cleaver Street, Kennington Road, St. Mary, Lambeth, Furniture Broker, Appraiser and Valuer. *Bell*, Off. Ass.; *Rosser*, Dyer's Buildings, Holborn. Nov. 15.
- Pegrum*, John, 1, Robert Street, North Brixton, Carpenter and Builder. *Edwards*, Off. Ass.; *Smith*, 17, Basinghall Street, City. Nov. 8.
- Pim*, John Bedford, Tweed's Court, Great Trinity Lane, Stationer and Rag Merchant. *Edwards*, Off. Ass.; *Buchanan & Co.*, 8, Basinghall Street. Nov. 5.
- Pitt*, Charles, Stratton Street, St. Paul's, Bristol, Licensed Victualler. *Hutton*, Off. Ass.; *Watts*, Bristol. Nov. 1.
- Pretty*, Thomas, Bilston, Stafford, Grocer, Druggist and Ironmonger. *Whitmore*, Off. Ass.; *William*, Bilston. Oct. 29.
- Raper*, John, Bridge Road, Lambeth, Tailor and

- Outfitter. *Whitmore*, Off. Ass.; *Jones*, Size Lane. Nov. 8.
- Robertson, Alexander, and Lewis Henry Folger, High Street, Shoreditch, Cabinet Makers and Upholsterers. *Johnson*, Off. Ass.; *Harrison* & Co., Walbrook. Nov. 1.
- Rochester, Robert, Hartlepool, Durham, Butcher. *Baker*, Off. Ass.; *Wilson* & Co., Hartlepool; *Meggison* & Co., London. Nov. 19 and 22.
- Row, John, Torrington, Devon, Chemist and Druggist. *Herniman*, Off. Ass.; *Rosses*, Great Torrington, Devon; *Holms* & Co., New Inn; *Turner*, Exeter. Nov. 8.
- Ross, Joseph Clark, 2, Savage Gardens, London, Merchant. *Bell*, Off. Ass.; *Miller* & Co., East Cheap. Oct. 29.
- Rudge, George Bickerton, and Arthur Jeffrey Rudge, Gloucester Street, Curtain Road, Japan Leather Manufacturers. *Follett*, Off. Ass.; *Norton* & Co., New Street Buildings, Strand. Nov. 1.
- Sawyer, William, (late of William Street, St. George's East, Oilman, now of 9, Louisa Street, Stepney.) *Green*, Off. Ass.; *Morrel*, West Square, Southwark. Nov. 12.
- Sedman, John, 18, Queen Street, Cheapside, Colour Merchant. *Groom*, Off. Ass.; *Loughborough*, 23, Austin Friars. Nov. 19.
- Sedman, John, 18, Queen Street, Cheapside, Colour Merchant. *Groom*, Off. Ass.; *Capes* & Co., Raymond's Buildings, Gray's Inn. Nov. 15.
- Sharples, John, Blackburn, Lancaster, Cotton Manufacturer. *Stanway*, Off. Ass.; *Bentley*, 1, Brick Court, Temple; *Robinson* & Co., Blackburn. Nov. 19.
- Sherwood, Thomas, Tilehurst, near Reading, Brick Maker, Lime Burner, and Farmer. *Pennell*, Off. Ass.; *Holmes* & Co., Great James Street, Bedford Row. Nov. 22.
- Simpson, Joseph, (late of Paradise Farm, Stockwell, Surrey,) Builder. *Alsager*, Off. Ass.; *Alexander*, 6, South Street, Finsbury. Oct. 25.
- Soul, Caleb, 120, Long Alley, Moorfields, Grocer, Cheeseman, and Buttermann. *Edwards*, Off. Ass.; *Taylor*, North Buildings, Finsbury Circus. Nov. 15.
- Staplers, Jones, (late of Cottenham, Cambridge, Plumber, Painter, Glazier, and Paper Hanger.) *Bell*, Off. Ass.; *Johnson*, Walcot Square, Lambeth. Nov. 5 and 22.
- Sugden, John, Leeds, Machine Maker. *Hope*, Off. Ass.; *Mitton* & Co., 23, Southampton Buildings; *Dunning* & Co., Leeds. Nov. 19.
- Swift, Thomas, Rotherfield Street, Islington, and Joseph Alfred Hensman, Margate, (both formerly of Copthall Court, Throgmorton Street,) Bill Brokers. *Green*, Off. Ass.; *Weir* & Co., Coopers' Hall. Nov. 8.
- Taberner, John Loude, Birmingham, Auctioneer and Corn Factor. *Whitmore*, Off. Ass.; *Slaney*, Cannon Street, Birmingham. Nov. 8.
- Till, Charles, Minster Street, Salisbury, Wilts, and of Andover, Southampton, Linen Draper. *Turquand*, Off. Ass.; *Jones*, Size Lane. Oct. 22.
- Tomkinson, Michael, Kidderminster, Linen Draper. *Whitmore*, Off. Ass.; *Robinson* & Co., Queen Street Place, Upper Thames Street; *Hardwick* & Co., Weavers' Hall, Basinghall Street. Nov. 22.
- Utting, James Henry, Newman Street, Oxford Street, Upholsterer and Cabinet Maker. *Follett*, Off. Ass.; *Hudson*, Bucklersbury. Nov. 22.
- Vaile, Joseph, Cheltenham, Gloucester, Wine and Spirit Merchant. *Kynaston*, Off. Ass.; *Bubb* & Co., Cheltenham; *Brown* & Co., Bristol. Nov. 12.
- Vaughan, Griffith, Llaneddy, Carmarthen, Innkeeper. *Hutton*, Off. Ass.; *Jeffrey*, Swansea; *Haberfield*, Bristol. Nov. 12.
- Vardy, John Eyre, 108, High Street, Portsmouth, Draper. *Turquand*, Off. Ass.; *Magg*, Paternoster Row. Nov. 22.
- Walker, William, Birmingham, Hatter. *Valpy*, Off. Ass.; *Jackson*, 2, Field Court, Gray's Inn; *Harrison* & Co., Waterloo Street, and Edmund Street, Birmingham. Oct. 25.
- Watson, James, Carlisle, Grocer. *Wahley*, Off. Ass.; *Mounsey*, Carlisle; *Gray*, 9, Staple Inn. Nov. 15.
- Watson, Sarah Taylor, and William Byers, Skinner Street, Woolen and Manchester Warehousemen. *Turquand*, Off. Ass.; *Dods* & Co., Lodenhall Street. Nov. 19.
- Westrup, Walter, and Thomas Martin Coobadge, New Crane, Shadwell, Middlesex, and of Northfield, Kent, Millers, and Ship Blastic Bakers. *Bell*, Off. Ass.; *Shawman* & Co., Great Tower Street. Oct. 22, and 25.
- Willet, Joseph, Coggeshall, Essex, Leather Cutter and Leather Seller. *Turquand*, Off. Ass.; *Lett*, Bow Lane. Oct. 22.

## THE EDITOR'S LETTER BOX.

The report of the decision in an action against an attorney for negligence, at p. 89, *ante*, is deserving of particular attention.

We shall comply with the request of our correspondents in regard to the repeal of the certificate duty, and shall probably be prepared next week with a statement of the amount of the duty now paid, as well for the annual certificates, as for the articles of clerkship and admissions. The Law Societies throughout the country will, no doubt, exert themselves before the Income Tax question comes on. We have often adverted to this subject, and shall not be wanting on this occasion.

The letters of "Aliquis" and W. H. have been received.

We recommend "Patientia" to speak very slowly, the habit of which will soon overcome the impediment he mentions.

\*. \* *The Legal Almanac, Remembrancer, and Diary*, for 1845, which was published last Tuesday, will be found, we believe, well-adapted for professional use.

The Fourth Part of the "Analytical Digest" of all reported cases in all the Courts, published last week, completes the volume for the present year.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 7, 1844.

Quod magis ad nos

Fortinet, et nocere malum est, agitur.

MOAT.

### THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

A DIFFICULTY in the administration of justice in this country, to which we have repeatedly adverted, again presses on our attention. It is simply this—that there is no regular head of the Judicial Committee of the Privy Council. It is surely a hard and strange thing to say, that the second appellate court of this country, the jurisdiction of which extends over a great part of the habitable globe; which disposes of millions; and which decides on questions the most important, the most multifarious; which may be said to influence the fate of nations;—it is surely a hard and strange thing, that this great court is at this moment going a-begging for a judge. A heavy and important list of causes is before it; suitors of all nations and all tongues are awaiting its decisions; an excellent bar is ready to assist the court; but the judicial power is, as we may say, “all abroad.” The judicial authority is fluctuating and uncertain: one learned judge is in the South of France, enjoying the soft breezes of the Mediterranean; another is just returned from abroad; a third, declines to attend at all; a fourth is somewhere in the country, and cannot be summoned; a fifth—and here comes the main grievance—is presiding in his own court, a court of equity; a sixth is presiding in his own court, a court ecclesiastical; and the others are all similarly occupied. Do we blame any of these learned persons, then, for not attending? There is not a shadow of blame to be imputed to any one of them;

on the contrary, if we were disposed to censure them, it would be far attending. If no one attended, the evil must be remedied; and we would gladly hear that one and all of the judges of this court found that their other engagements rendered their presence here impossible. If they do attend, it is simply an additional proof of that public spirit and strict sense of duty for which English judges have been ever conspicuous.

The great evil, then, is this: it is the business of no one to be there, far less the exclusive duty of any one to preside over the court; and hence all this great evil and great source of complaint. Lord Langdale, who presides so efficiently in his own court, has been obliged to absent himself almost entirely from the Rolls for some days past, to attend the Privy Council, leaving the equity suitors and the equity bar to deplore his temporary loss. We would ask how long is this anomalous and extraordinary state of things to be allowed to continue? Cannot this great country afford to pay a judge of one of its appellate courts, second only to one in rank, and second to none in business and importance?

We do trust, therefore, that the government will turn its attention to this state of things, and apply a proper remedy. They can be at no loss for a competent judge. There are at least three persons who already voluntarily attend the ordinary sittings of the court, who would, in the opinion of all, make a fitting head. Need we say that Lord Brougham, Lord Campbell, and Mr. Pemberton Leigh, are all fully competent to discharge the duties of this office? We do hope, therefore, that

the government will take upon itself this duty, and on its own responsibility will bring forward a measure early next session for constituting a proper judge or judges of this court, and neither take judges from other courts to preside there, or throw the duty on unpaid judges: a course, as we consider, constitutionally unsafe and inexpedient.

In connexion with this subject, we may observe, that we have heard various rumours of intended appointments, to none of which, however, we feel authorized in giving any further currency.

## PRACTICAL POINTS OF GENERAL INTEREST.

### PUBLICANS' ACT.

By the act for licensing publicans, 9 Geo. 4, c. 61, s. 21, the publican is prohibited, under pain of certain penalties, from knowingly suffering any unlawful games, or any gaming whatsoever, upon the premises. And it has been held that money lent by a licensed publican, for the purpose of enabling a guest to play, being an offence against the tenor of this act, cannot be recovered. *Semble*, however, that money (not amounting to 10*l.*) lent for the purpose of playing at "Skittles" may be recovered. *Foot v. Baker*, 6 Scott, N. S. 301.

### WAGER.

A wager against public policy is void. *Gilbert v. Sykes*, 16 East, 160. So also is a wager respecting the proceedings of a court of justice. *Evans v. Jones*, 5 M. & W. 77. A wager may also be void on the ground that it is a bubble bet: thus, where the plaintiff had bet the defendant eight bottles of wine that he, the defendant, would pass his examination as an attorney. The defendant passed his examination, and refused to pay. Lord Denman, C. J., said, "I think the objection that this is a bubble bet has not been answered. The defendant had the event in his own command." *Fisher v. Waltham*, 1 Dav. & Mer. 142.

## THE ALTERATIONS MADE IN THE LAW OF JOINT STOCK COMPANIES.

### No. III.

#### FUTURE COMPANIES.

WHERE complete registration has been obtained, the powers of directors are thus defined: It shall be lawful for the directors (s. 27) to conduct and manage the

affairs of the company according to the provisions of the act, and for that purpose to enter into all contracts and execute such deeds as the circumstances may require.

2. To appoint a secretary, clerks, and servants, and to remove them.

3. To appoint other persons for special services.

4. To hold meetings periodically, and appoint a chairman.

By s. 28, each director, patron, and president must have at least one share in the company; and if he shall act as such director, patron, &c., he shall forfeit for every offence a sum not exceeding 20*l.*; and if any person be announced as a director, patron, or president, without having so consented, each director knowingly concurring in such representation shall forfeit a sum not exceeding 20*l.*

If any director be either directly or indirectly concerned or interested in any contract proposed to be made on behalf of the company, he shall to this extent be precluded from voting or acting as a director; and if any contract shall be entered into in which any director shall be interested, then the terms of such contract shall be submitted to the next general meeting of the shareholders, to be summoned for that purpose, and no such contract shall have force until approved by the majority of votes of the shareholders present at such meeting. (s. 29.)

If any director shall cease to be a holder of the prescribed number of shares, or become bankrupt or insolvent, &c., or be declared lunatic, then it shall be unlawful for any such director to continue as director. (s. 27.) But by s. 30, if the disqualification be unknown, all acts done *bona fide* shall be binding, but an act of wilful fraud or omission by a director is made a misdemeanor. (s. 31.)

All these clauses are evidently designed to prevent, if possible, the impositions which have frequently been practised on the public by holding out persons as patrons and directors of joint stock companies, who have either no interest in them, or, as has sometimes happened, are ignorant of their existence. The 65th section carries this a step further, by reciting that "great injury has been inflicted upon the public by companies falsely pretending to be patronised, or directed, or managed by eminent or opulent persons;" and it is enacted, "with regard to every company or pretended company whatsoever, whether

registered or not, and whether now existing or not, that if any person shall make any such false pretences, knowing the same to be false, in any advertisement or other paper, whether printed or written, and whether published in any newspaper, or handbill, or placard, or circular, then every such person shall forfeit for every such offence a sum not exceeding 10l."

The next point to which we shall advert, as provided for by the act, is that by s. 32: "If the entry of the proceedings of any meeting of the shareholders or of the directors purport to be signed by the chairman, and sealed with the seal of the company, then it shall be the duty of all courts of justice to receive the book in which such entry shall be made as *prima facie* evidence of the proceedings."

By s. 33, the books of the company shall be kept at the principal or only place of business, and shall be open to the inspection of the shareholders, but subject to the provisions of the deed of settlement. This is an important clause, and will require attention in preparing any future deed of settlement.

There are several provisions as to the accounts of companies completely registered under the act. By s. 31, the directors are to cause the accounts of the company to be duly kept in books for the purpose. These books are to be balanced, the balance-sheet examined, which the chairman shall sign, (s. 35); and at each ordinary meeting of the shareholders the balance-sheet is to be produced. (s. 36.) Fourteen days previously to such ordinary meeting, and during the month afterwards, every shareholder may, subject to the provisions of the deed of settlement, and any bye-law of the company, inspect the accounts; and if at any other time three directors authorise any shareholder to make an inspection, such shareholder may make it. (s. 37.)

The act also provides for the appointment of auditors by all companies completely registered (s. 38); the accounts are to be delivered to such auditors, who are to receive and examine them. (s. 39.) These auditors may inspect the books of the company, and are entitled to receive the assistance of the officers of the company for this purpose. (s. 40.) Within 14 days after the receipt of the balance-sheet, the auditors are to report on the state of the accounts, (s. 41.) and to publish such report (s. 42); and the balance-sheet and the auditor's report are to be

registered at the Registry Office of joint stock companies. (s. 43.)

## THE PROPERTY LAWYER.

### RIGHT OF WATER.

THE owner of land through which water flows in a subterranean course, has no right or interest in it which will enable him to maintain an action against a landowner who, in carrying on mining alterations in his own land, in the usual manner, drains away the water from the first-mentioned owner, and lays his well dry. *Quare*, whether, if this well had been ancient, there would be any difference. "Each proprietor," said Tindal, C. J., "of the land has a right to the advantage of the stream flowing in its natural course over his land, to use the same as he pleases, for any purposes of his own not inconsistent with a similar right in the proprietor of the land above or below; so that neither can any proprietor above diminish the quantity or injure the quality of the water which would otherwise naturally descend, nor can any proprietor below turn back the water, without the license or the grant of the proprietor above." Leaving untouched, therefore, the question as to how far the law would affect an ancient well, it was held that the right to the enjoyment of subterranean springs falls within that principle which gives to the owner of the soil all that lies beneath its surface; that the land immediately below is his property, whether it is solid rock, or forms ground or venous earth, or part soil part water; that the person who owns the surface may dig therein, and apply all that is there found to his own purposes, at his own free will and pleasure, and that if, in the exercise of such right, he interrupts or drains off the water collected from underground springs into his neighbour's well, the inconvenience to his neighbour falls within the description of *damnum absque injuriâ*, which cannot become the ground of an action. *Acton v. Blundell*, 12 M. & W. 324.

## EXPECTED NEW ORDERS IN CHANCERY.—OFFICE COPIES.

It is now confidently stated that the new orders in Chancery will appear



before the next term. We understand that they take an extensive range over practice, both in the Master's office and previous to this stage of a suit. We are glad to hear that all previous orders will be revoked, and one uniform body of practice substituted.

As these orders are practical, they may perhaps deal with a matter not beneath the attention of the court,—namely, the form and manner of making *office copies*, to which the attention of the Lord Chancellor was lately called.\* We believe it has been suggested that all office copies should be of a uniform size and in an intelligible handwriting, carefully examined and accurately counted. There should be an official stationer according to the practice adopted in the office of the taxing masters.

## REPEAL OF CERTIFICATE DUTY.

OUR attention has been called to the petition of attorneys, solicitors, and proctors residing in Lincolnshire, for the repeal of the attorneys' annual certificate duty. We have almost annually, for fourteen years, argued against this unjust and unequal tax, levied on one branch of the profession only, and which is not imposed on any other profession than the law. The petition is nearly to the same effect as that which was numerously signed some years ago, and was then promoted by the Incorporated Law Society. The following are the statements in the petition, which may serve as the ground-work for other petitions:—

"That by an act of parliament, 25 Geo. 3, c. 80, for granting duties on certificates to be taken out by attorneys, solicitors, and others, every attorney, solicitor, and proctor was required to take out an annual certificate, on which, if he resided in London or Westminster, or within the bills of mortality, there was charged a stamp duty of 5*l.*, and if he resided in any other part of Great Britain, a stamp duty of 3*l.*

"That such annual certificate duties have, by various acts, and ultimately by the act 55 Geo. 3, c. 184, been increased to the following amounts, viz.:—

"Every attorney, solicitor, and proctor residing within the limits of the twopenny-post, having been admitted for three years or upwards	£12
"If he has not been admitted so long	6

"If he resides elsewhere, and has been admitted three years	5
"If he has not been admitted so long	4

"That by the last-mentioned act a stamp duty of 120*l.* is also charged upon all articles of clerkship to an attorney, solicitor, or proctor, without reference to the amount of premium, and a further stamp duty of 25*l.* is charged upon every admission of an attorney, solicitor, or proctor, and which, with the fees paid thereon, amount in the whole to the sum of 150*l.*; while the clerks or apprentices in every other business only pay a stamp duty on the indentures calculated by a scale in proportion to the amount of premium paid, and in no case does such stamp duty exceed 60*l.*

"That the duties on articles of clerkship, upon an average for 10 years, ending July 1836, have amounted annually to	£69,960
"On admission, to	8,330
"And on certificates, to	72,187

"Making a total sum of £150,477

"That the supposed profits of the business of an attorney, solicitor, or proctor are greatly overrated, for his bill of costs generally contains large sums of money disbursed for stamps, counsels' fees, and otherwise, which are frequently not repaid to him for so long a time, that the mere loss of interest on the capital very much reduces, and sometimes wholly exhausts, his profits.

"That by the operation of some recent alterations in the law, and the practice thereof, and enactments referring to the preparation of deeds and other documents, the profits of an attorney and a solicitor have been much diminished, although his disbursements continue very nearly the same as they have been for several years past.

"That your petitioners, from their position in society and habits, are necessarily paying considerable sums to the assessed taxes, and also (with members of the other professions) an income tax on their profits, which are uncertain, and cease with their lives."

The petitioners then urge

"That these duties, and particularly the duty on annual certificates, are not founded on any just and equal principle of taxation, but are a direct personal and partial tax upon persons exercising one particular branch of the legal profession only, whilst persons exercising other professions, and those engaged in the higher branch of the profession of the law, are exempt from similar taxations."

And they pray that they may be relieved, either wholly or in part, from the payment of the annual duty on certificates.

The amount paid by certificated attorneys is stated as the number stood in 1836. The present number is about 9,800, of whom more than two-

\* See p. 50, ante.

thirds reside in the country. Taking the one at 8*l.* each, and the other at 12*l.*, and deducting a certain proportion for those who, during the first three years, pay a lower duty, we believe the annual sum paid for certificates is now about 90,000*l.*

There must of course be an equal increase in the number of stamps for articles of clerkship and admissions, and as the sum of 72,000*l.* in the year 1836 has, in eight years, increased to 90,000*l.*, the other items of 69,000*l.* and 8,300*l.* must have increased to 87,000*l.* and 10,000*l.*, making the total annual payment 187,000*l.*, or thereabouts.

At the sitting of parliament, it will be expedient to apply for the regular returns from the Stamp Office of the sums received annually since the last return; and we understand this will be done by the Incorporated Law Society.

We some time ago called attention to the subject, and suggested that when the reconsideration of the Income Tax comes before parliament, then will be the time to advance the claim for relief. In the mean time, the country Law Societies, and the members of the profession generally, should make due preparations.

## THE DOCTRINE OF MERGER.

THERE is, perhaps, no subject within the limits of the laws of real property of so much interest to the scientific lawyer as the doctrine of merger. It is without doubt the most abstruse and subtle theory which prevades the whole of our juridical system, and perhaps there is scarcely any other, the reasons of which are less apparent. It is almost impossible to ascertain the grounds and origin of this doctrine. That it took its rise in feudal times and during the period of the simplicity of common law conveyances, can hardly be doubted. It is one of those strict common law doctrines which is applied in all the unbending rigour of positive law, wherever the circumstances necessary to bring it into operation occur, without any exception or reservation on account of the peculiar hardships, the injustice, or inconvenience which the application of it may involve. In this respect it resembles the rule which will not permit the immediate freehold to be in abeyance, the rule which requires a remainder to vest before the expiration of the particular estate or *eo instanti* that it determines; and the rule known as the rule in *Shelley's case*, which gives the benefit to the ancestor of a limitation in favour of the heir. For the first, the reason alleged in the old books is, that the law will not allow the immediate freehold to be in abeyance, because strangers would not know against

whom to bring their præcipe; for the second, a somewhat similar reason is alleged; and for the last, though many learned discussions have taken place on the subject, the best and most approved opinion is, that it was resorted to for the preservation of the rights of lords, for had it been allowable to limit a freehold estate to an ancestor with a remainder to his heirs, the feudal lords would have been defeated of their reliefs and fines for wardship and marriage, whereas the heir taking by descent under this rule instead of by purchase, those valuable fruits of the feudal tenures were preserved to them. But for the application of the doctrine of merger it will be difficult for us to discover such good and cogent reasons. In many cases it has operated and still operates very prejudicially to the interests of various parties, and in more than one instance so strongly has this been felt, that the legislature has interfered to protect landlords from the injury which the inflexible operation of this positive rule of law would otherwise entail upon them.\* One of the reasons assigned for the learning of merger is *nemo potest esse dominus et tenens*, and considering the strictness with which the relation between lord and tenant was guarded during the times of the common law, this does not seem at first sight a very improbable hypothesis.

We will first notice some of those cases in which this principle seems to govern the operation of merger, and then refer to others which cannot be reduced to this rule. When a tenant in fee created a lease for years the lessee holds of his lessor, and by a surrender of the lease the latter unites in himself the characters both of lord and tenant, and therefore the law declares that there is a merger of the term. This principle and reasoning is equally applicable and equally true as applied to underleases carved out of estates for years. When a tenant in fee grants a lease to B. for 21 years, and B. grants a lease for 10 years to C., there are two lordships (so to speak) and two tenancies existing between the parties. B. the first lessee holds of his lessor, whilst C. the underlessee holds of B. Consistently with this principle, the law holds that C.'s term may merge in B.'s reversion, and B.'s term in the reversion of A. There is no tenure subsisting between C., the under-lessee, and A., the original lessor, and therefore, though C. should grant his term to A., no merger would ensue. The same rule is applicable to the surrender of estates for life, and *pur autre vie* to the reversioner, in which a merger of the estates for life takes place. So in the instance of a merger of a term for 1000 years in the term for one day, the rule of *nemo potest esse dominus et tenens* appears to guide the decision. The person in whom the two terms become vested, is entitled for one day to the rents reserved upon the term for 1000 years, and hence the law declares that there is a merger of the term of 1000 years in that which, though of much shorter duration,

\* 4 Geo. 2, c. 28, and 7 & 8 Vict. c. 76.

is held in a higher and nobler character. The merger of an estate in fee, in the copyhold tenure, in the particular estate of the freehold tenure, appears reducible to the same principle. We think that to this rule may be referred a case which some writers have considered of an anomalous character. In *Bredon's case*, 1 Rep. 76, a tenant for life and the remainderman in tail, levied a fine sur conuzance, &c. to another in fee, rendering rent to the tenant for life, and the remainderman in tail died without issue in the lifetime of tenant for life. The court held that the rent was still payable to A. during his life, which sufficiently proves that no merger of the estate for life took place. Now it is clear that the reservation of the rent created a species of tenancy between the tenants for life and in tail, and the grantee—the latter held of the two former, according to their several estates in the land, in the same manner as a copyhold tenant holds of his lord. This principle at once explains the grounds of the decision, and reconciles it with the prior cases which we have referred to this rule. And we may here notice two modern cases which furnish us with some interesting inquiries on this subject. In *Preece v. Corrie*, 5 Bing. 26, and *Poultney v. Holmes*, 1 Stra. 405, it was held, that where a lessee leases the land for the whole of his term, reserving the rent to himself, this operates as a demise and not as an assignment, although there remaining no reversion in the lessor he cannot distrain for rent. Now when lessee for 20 years' leases for 10 years, he still continues the owner of the residue of the whole term for 20 years, partly in point of seignory and partly in point of right to the possession when it shall be vacant. 3 Pres. Conv. 214. Does he not in the case of leasing for the whole of his 20 years, and reserving rent to himself upon the principle and authority of the above cited cases of *Poultney v. Holmes*, and *Preece v. Corrie*, continue owner of the whole term of 20 years in point of seignory, and is he not therefore enabled to accept a surrender from his lessee, and will not the term of 20 years merge in his seignory upon such surrender being made, and the original lessee for 20 years become again entitled to his term in point of possession. These are questions which seem to flow from the principle of the two last-mentioned cases, and are deserving of consideration.

All these cases of merger may be referred to the rule of *nemo potest esse dominus et tenens*; we will now mention a few which cannot be reduced to the same principle,—those for instance in which an estate of inferior quality merges in an estate of superior degree, in remainder. When A. is tenant for life with remainder to B. in tail, and A. surrenders to B., the estate for life of A. is drowned in the remainder in tail. Now as there is no tenure subsisting between A. and B. the only principle to which we can refer the merger in this case, is that the law will not allow two estates of unequal degree immediately expectant on each other to meet in the same person, when the

first estate is of the lesser quality, but by merging the first brings the estate of superior quality into possession. When the estate of superior degree is in possession and the estate of inferior degree in remainder, no merger takes place, and that apparently upon the same ground, as by merging the first estate the law would be putting away substance in order to introduce the shadow. We may here notice one of those crude exceptions to the application of legal principles which occasionally break in upon and destroy the harmony of our juridical system. An estate of freehold will not merge in a term of years in remainder, because, as we have just stated, the former is an estate of superior quality to the latter, the one is a freehold and the other a chattel. It is assumed that the reason there is no merger in this case is, not because the enjoyment of the estate for life may be more beneficial than the enjoyment of the estate for years, but because the former is an estate of higher quality in contemplation of law than the latter. But upon what principle are we to explain the merger of an estate *pur autre vie* in an estate for a man's own life? Not because the estate merged is of less quality than that in which it merges, for both are of freehold, but forsooth, because the law esteems an estate *pur autre vie* of more benefit than an estate for a man's own life! It seems still undecided whether one term of years will merge in another term in remainder. The two estates are of the same quality—chattels. Are we to apply in this case the evanescent rule laid down in the former, and according as the ulterior estate, is of greater or less value than the immediate estate, in other words, for a larger or shorter term, to decide the question of merger. This would be introducing a variable rule indeed to be applied to each individual case, something like the administration of equity according to the length of the chancellor's foot; instead of uniformly maintaining and applying the clear and well known principle of law. The merger of the equitable fee in the legal fee is another case which does not seem referable to the rule of *nemo potest esse dominus et tenens*, inasmuch as that is a rule applicable only to common law estates, whilst the merger which takes place in this case arises by the construction of a court of equity. Perhaps it is one of those cases governed by the maxim *equitas sequitur legem*. Again, those cases in which the tenant of a particular estate grants it to the reversioner, but which particular estate is separated from the reversion by a remainder, and in which there is no merger forms exceptions to the application of the before-mentioned principle. In these cases the reversioner unites in himself during the continuance of the particular estate the characters of lord and tenant, and yet no merger takes place. It seems impossible to deduce the principle upon which such cases rest: all we know is its *lex scripta est*. We should remark, however, that there is an old case in which it was held that when a lease for years is made to A., and afterwards a lease in reversion is made to B. for years, and A. obtains an

estate for life from him in the reversion, the estate of B. shall begin presently. This has however long been overruled.<sup>b</sup>

In connexion with the subject of merger, the recent Act to simplify the transfer of property possesses some importance. It was decided in *Lewis Bowles'* case that when an estate was conveyed by one assurance to a man for life with a contingent remainder to another with the ultimate remainder in fee to the tenant for life; a partial merger by the estate for life takes place, which would open and let in the estate to arise under the contingent remainder upon the happening of the prescribed event. But if A. were tenant for life, with a contingent remainder in tail to B., with remainder to C. in fee, and C. released to A., or A. surrendered his life estate to C., the contingent remainder of B. was gone for ever. Now by the 7th & 8th Vict. c. 76, s. 8, it is enacted that no estate shall be created after its operation by way of contingent remainder, and that contingent remainders existing under deeds, wills, or instruments executed or made before the time when that Act should come into operation, shall not fail or be destroyed or barred merely by reason of the destruction or merger of any preceding estate or its determination by any other means than the natural effluxion of the time of such preceding estate or some event on which it was in its creation limited to determine. It therefore becomes an interesting subject of inquiry whether by the operation of the above clause where an estate for life and the remainder in fee, subject to an intervening contingent remainder, become united in the same person by some act *subsequent to their creation*, the life estate will be preserved from merger in the remainder in fee. The Act says that such contingent remainder shall not fail, or be destroyed, or barred by reason of the merger of any preceding estate, but does not say that such preceding estate shall not merge. We conceive that the effect of the recent Act has been to extend the doctrine of *Lewis Bowles'* case to cases in which a particular estate, and the remainder in fee subject to an intervening contingent remainder, became united in the same person by an act subsequent to their creation; so that, supposing an estate now stands limited (as in *Lewis Bowles'* case) to A. for life, with remainder to A.'s first son (unborn) in tail, and A. acquires by purchase the remainder in tail, A. will be seised in possession of an estate tail until the birth of a son, when by the operation of law the estate will become divided. A. will be converted from tenant in tail into tenant for life with remainder in tail to his son, with remainder in tail to himself.

A question will arise here as to the effect of such temporary vesting in A. of the estate tail. Will it confer the rights of dower and curtesy? or when the contingent event occurs, in abridging the character of A.'s estate will it

take away all the incidents which would have attended it had it continued an estate tail? An argument may be drawn in favour of the right to dower and curtesy continuing, from the case of *Moody v. King*, 2 Bing., in which it was held that where A. is seised in fee of real estate subject to an executory devise, and the event, on which the executory devise is to arise occurs, yet the right of dower of the wife of A. is not defeated. It must be remembered also, that although the cases of *Boothby v. Vernon* and *Bowles'* case are cases which negative the right of the husband or wife, yet that those were cases in which the two estates came together, either by the original limitation of the parties or by operation of law. We are now addressing ourselves to the case of a merger of the life estate taking place by the direct act of the parties. Cases may also occur as to the operation of a statutory deed executed by a person who is seised in possession sub modo of an estate tail under the circumstances above mentioned, and as to the extent of the estate it will pass to the alienee; assuming of course that the person who is at once tenant for life and tenant in tail in remainder is *not* the protector of the settlement. And it must be remembered that these points may arise upon existing titles by the operation of the 8th clause of the Act, and may possibly ere long come before the Courts for decision. They are interesting in a scientific point of view, and are likely to become important in practice.

In conclusion, we may observe that it would be well for the principles of law, and for the sake of consistency, if many of the rules and decisions upon the law of merger were reviewed, and the whole reduced to a principle clear and undoubted, and capable of application to every variety of circumstance. To say that under circumstances, such as occurred in *Lewis Bowles'* case there is a merger sub modo, an absorption of the estate for life in the fee, while the consequences which must follow such absorption, if it actually took place, are not produced, a destruction of a particular estate, which yet upon the happening of a contingent event, proves to be in existence; is at once to perplex the mind with distinctions without a difference, and to encumber our system of real property law with useless and absurd technicalities, which only serve to render it more and more odious to the common sense of the community. If, as we presume is the case, A.'s wife is not entitled to dower by the merger of the particular estate in his remainder in fee, by the operation of the 8th sect. of the 7 & 8 Vict. c. 86, it appears to us absurd and unintelligible to say that there is any merger of the estate for life, since the legal effects which a merger of the estate for life must superinduce, are not produced. It must be admitted however, that the wording of that clause rather favours the supposition that there is a merger, since it enacts that no such contingent remainder shall be destroyed *by reason of the merger of any preceding estate*. It

<sup>b</sup> *Wrotlesley v. Adams*.

would be much more consistent, however, under the circumstances, to say that there is no merger, but that the estate for life and the remainder in tail exist at one and the same time in the same individual, the one in possession, and the other in remainder.

J. H.

## NOTICES OF NEW BOOKS.

*A Manual of Medical Jurisprudence.* By ALFRED S. TAYLOR, Lecturer on Medical Jurisprudence and Chemistry in Guy's Hospital. London: John Churchill. 1844. pp. 679.

Medical Jurisprudence is attractive, not only to the legal and medical practitioner, but to the man of science and the student of general literature. There have been, consequently, many treatises on the subject, some of which have been from time to time noticed in these pages. The latest work is by Mr. Alfred Taylor. His treatise is comprehensive in its scope, full of useful matter, well arranged, and concisely and ably written. He defines Medical Jurisprudence as "that science which teaches the application of every branch of medical knowledge to the purposes of the law;" and he rests its claims to attention on two grounds: "1st, that the subjects of which it treats are of practical importance to society; and 2nd, that they are not included in the other branches of a medical education." He thus appeals to the reading part of both professions.

Mr. Taylor's arrangement of his materials is that of placing them in the order of their importance. He commences with *Poisoning*, which occupies 28 chapters. He then proceeds to *Wounds*, which occupy 14 chapters. The subject of *Infanticide* comes next, and is treated of in 11 chapters. Death by *Suffocation* follows; then *Legitimacy*, *Insanity*, and various other topics.

It appears that the cases of *Poisoning*, *Wounds*, and *Infanticide* constitute more than three-fourths of those which require the aid of a medical jurist in a court of law, and consequently Mr. Taylor has treated them at a length commensurate with their importance. The subjects are examined in the form of questions, after the manner of Orfila and Christison. Those relating to *Wounds* and *Infanticide* have been chiefly derived from an analysis of the medical evidence given on the numerous trials connected with those crimes during the

last fourteen years, and thus every point of practical interest has been brought before the reader. A large number of the cases have never before been published, and being entirely derived from modern sources, are more practically useful than the older cases, however curious. This, we think, was the best mode of selection, and the frequency and importance of cases of this kind may be estimated by some recent parliamentary returns, from which it appears that in one year, in the United Kingdom, there were 1213 trials involving questions of murder and manslaughter, either perpetrated or attempted, from poisoning or wounds alone, in every one of which medical evidence was necessary, and in the majority indispensable, to conviction. In two years there were 541 deaths from poison in England and Wales alone, in the greater number of which medical evidence was absolutely required. This is exclusive of criminal attempts at poisoning, not followed by death; and Mr. Taylor omits all reference to medical evidence in civil cases, because these are comparatively rare. These facts show that a practitioner must not too confidently rely upon the chance of escaping duties which may reflect upon him the greatest public honour or disgrace, according to the manner in which they are performed.

Mr. Taylor observes truly, that great responsibility is attached to the duties of a medical witness, and that any member of the profession may find himself involved in this responsibility, from circumstances of a merely accidental nature. "When a crime requiring medical evidence for its elucidation is perpetrated, the duty of the whole investigation devolves on the practitioner who lives nearest to the spot: it is therefore virtually upon his knowledge and experience that the clear proof of the crime, and the legal punishment of the offender must rest."

The advice given to the medical witness regarding the notes to be taken of the facts and circumstances to which he may be required to depose, are judicious:—

"From the common forms of law in this country, an individual charged with the crime of poisoning may remain imprisoned, if at a distance from the metropolis, for a period of six or seven months before he is brought to trial. It is obvious, however clear the whole of the circumstances may at the time appear to the examiner, that it will require more than ordinary powers of memory to retain for so long a period, a distinct recollection of all the facts of the case. If he be unprovided with notes, and

his memory be defective, then the case will turn in favour of the prisoner, for he will be the party to benefit by the neglect of the witness. In adopting the plan here recommended, such a result may be easily prevented.

"It may be remarked, that the law relative to the admissibility of notes or memoranda in evidence, is very strict and is rigorously insisted on by the judges. In order to render such notes or memoranda admissible, it is indispensably necessary that they should be taken on the spot at the time the observations are made, or as soon afterwards at practicable. It is not necessary to their admissibility as evidence, that the observations should be written down by the practitioner himself, provided they are made under his immediate inspection at the time or at his suggestion, and are soon afterwards looked over and corrected by him. Thus, whenever, at a trial, a medical witness produces notes for reference during his examination, the question is invariably put to him as to when the notes were made. Their admissibility depends upon his answer.

"Many examples might here be cited of the rejection of notes, made by medical witnesses, owing to a non-observance of these points. On the trial of Sir A. Gordon Kinloch at Edinburgh, for the murder of his brother, the surgeon was about to give his evidence respecting the wound of which the deceased had died, from notes made some time after the event, when he was stopped by the judge, who explained to him the law on the subject. The reason why the law so rigorously excludes the admission of memoranda in evidence, made at a distance of time, appears to be this: it prevents the possibility of all fraud or collusion on the part of the witnesses, either to favour or to injure the prisoner; for a connected story might, it is presumed, by such means be so made up at a distance of time, as to defy the ingenuity of counsel on either side to make out the deceit.

"The notes used by a witness, should be original, and not a copy of notes made by another. A copy of notes, except under very peculiar circumstances, is not admissible as evidence.

"There is another rule of law with respect to the use of notes or memoranda in evidence, which is not perhaps so generally known to medical practitioners; but it is essential that it should be observed. The notes may have been fairly made on the spot in the manner required by law; but when a witness is about to refer to them, he will probably be asked whether he is using them for the purpose of refreshing his memory, or whether he is about to speak only from what is written on the paper, without having any precise recollection on the subject. If he is referring to them for some fact which he has altogether forgotten, then the notes are *pro tanto* inadmissible as evidence; for it has been held by our judges, that notes can only be used in evidence for the purpose of refreshing the memory on a fact *indistinctly remembered*: they are not permitted to be used for

the purpose of reviving impressions entirely forgotten. The most eminent legal writers lay it down, that if there be any single point in the notes, which the witness does not recollect, except that he finds it there written, such point is not evidence. Notes are only allowed to assist recollection, not to convey information.

"On a late trial for poisoning, the medical witness, after having detailed the action of some tests, which he had employed in the detection of the poison, referred to his notes before giving the results of other experiments. Upon being asked when the notes were made, he answered satisfactorily by stating, that they were taken at the time of the observations. The counsel then asked the witness, whether he used the notes to refresh his memory, or whether he had forgotten the subject, and was about to speak only from what was written on the paper. The witness said, that his memory was bad; that some time had elapsed, and he had entirely forgotten the results of these experiments. It was then objected that the results could not be given in evidence, since the witness could only speak to the facts from the memorandum which he held in his hand. The objection was admitted by the judge, and the evidence from the analysis was rejected."

Whilst bringing forward every medical point which would seem to establish a crime, Mr. Taylor has not concealed the very numerous objections to which all medical evidence is exposed. A man may be wrongly or rightly accused; it is for a jury to decide the point, and that medical jurist appears to lose sight of the true object of the science who devotes the energies of his mind, in a case otherwise doubtful, to only one side of the question. We ought not to hear of a medical prosecution and a medical defence. The evidence should always be given with a view,—not to the acquittal or conviction of a particular individual, but to the vindication of justice and the due protection of society.

On the subject of the *dying declarations* of persons murdered or supposed to be murdered, we extract the following:—

"The wound may be of such a nature as to cause death speedily, so that a practitioner may arrive only in time to see the wounded party die. In this case, the dying person may make a statement or declaration, as to the circumstances under which the wound was inflicted; he may also mention the names of the parties by whom he was assaulted. This dying declaration or statement, according to the circumstances under which it is made, may become of material importance in the prosecution of a party charged with homicide. It is therefore proper, that the practitioner should notice the exact condition of the dying person, whether at the time he makes the statement, he still re-

tains any hope of recovery, either expressed in language, or implied by his conduct. It is not necessary that a man should declare that he believes himself to be dying, in order to render his statement admissible; this may be judged of by his actual bodily condition—by the symptoms under which he is labouring, and by the characters of the wound, when it is gradually but surely leading to a fatal result. No one is better qualified to form a judgment on these points than a medical practitioner. When it is made clear to the court that all hope of life was lost, the statement will be received as evidence against an accused person; for the law supposes, that in the act of dying all interest in this world is taken away; and that the near contemplation of death has the same powerful effect upon the mind as the solemn obligation of an oath. It is presumed that there can be no disposition on the part of a dying person, to wilfully misrepresent facts, or to state what is false. Much, therefore, often depends on the conduct of a medical practitioner under such circumstances; for the usual method of testing the truth of a statement by cross-examination is, of course, out of the question: it must, if admitted at all, be received as it was made.

“No statement would be admissible when taken from a person, who had still some hope of recovery; yet a case may arise in which a practitioner might be in doubt upon this point. His duty then consists in taking the statement, and leaving the court to decide upon its admissibility from the facts observed and stated by him. A medical man should not render himself officious, in extracting information from a dying person under these circumstances. He should receive what is voluntarily uttered; and write the statement down, in the *identical* words, carefully avoiding his own interpretation of them, either immediately or on the earliest possible opportunity. On no account should leading questions be put;—and any question should be simply confined to the purpose of explaining what may appear ambiguous or contradictory in the declaration.

“It is well known that when death takes place from violence, especially when this proceeds from hæmorrhage or a wound of the head, delirium is apt to supervene, or the intellect of the dying person becomes confused. Under these circumstances, great caution should be used in receiving a declaration, since it may lead to the implication of innocent parties. It is also proper to remark, that the identity of persons is at this time apt to be mistaken; and that it is in general a most injudicious proceeding to take a suspected party before one who is dying, in order that he may be identified. A fatal mistake of this kind was made some years since in London. A woman was maltreated by some men on Kennington Common:—she was taken to St. Thomas’s Hospital; and while dying from the effects of the violence, a suspected party was brought before her, as one of the supposed assailants. She deposed that he was one of those who had assaulted her. The man was

tried upon her declaration, respecting his identity,—found guilty, and executed; but a year after the execution, his innocence was satisfactorily established by the discovery of the real murderers.”

## CHANNEL ISLANDS. — HABEAS CORPUS ACTS.

Much attention has lately been directed to the small islands lying near the coast of France, commonly designated the Channel Isles. Jersey is much the largest of these, and the most populous, containing nearly 60,000 inhabitants, and being a place of much commerce. The harbour of St. Heliers ranks seventh in point of shipping among the ports of the United Kingdom. Guernsey is the next in point of size and importance. The lesser islands are Alderney, Sark, Herm, Jethou, and some still smaller. These isles were part of the Duchy of Normandy, and belonged to William the Conqueror: from his time down to the present they have formed part of the British dominions.

The law of these islands is the *Ancienne Coutume de Normandie*, the text of which is not to be found in any separate printed book, but is contained in the *Commentaries of Rouillé, Tenien, &c.*

From the earliest times the law has been administered in these islands by their own courts. The chief magistrate, or president of the court, is called the Bailly. This office, in Jersey, had for centuries been hereditary in the family of De Carteret, and the duties performed by deputy; but in 1826 an end was put to the succession of this noble family, and Sir Thomas le Breton was appointed to this post, and performed the duties in person. There are, besides the bailly, twelve jurats, the majority of whom decide both the law and fact in civil cases. The jurats are elected for life.

The law of real property is founded on the feudal system, which has not been so much relaxed as with us. Land still remains undivisible.

An appeal lies from the decisions of the insular courts, in civil cases, where the matter in litigation is of a certain value, to her Majesty in council, who is supreme in these islands. No appeal lies in criminal cases, but of course her Majesty has the power of pardoning prisoners, or commuting their punishment.

The islands also possess legislative bo-

dies. Each island has its states, composed of the bailly, the jurats, the constables, and the rectors of the parishes of each island. They enact laws, which, if intended to continue in force beyond three years, must receive the royal sanction.

It has always been held that the Queen's writ "runneth not into these isles," nor do acts of parliament bind them, unless they are specially named therein. It has been the custom for acts in which the islands are named to be registered there, by virtue of orders in council, whereby they are made public and of force in those parts.

These islands are named in the Habeas Corpus Acts. Mr. Carus Wilson, formerly a solicitor in London, published in one of the island newspapers, a letter attacking one of the advocates of the court. The latter gentleman brought an action for damages against Mr. Wilson. In the course of the hearing of the cause, that gentleman committed what the court considered a contempt. He was therefore sentenced to pay a fine of 10*l*, and to make an apology. Having declined to comply with this order, he was committed to prison.

Mr. Peacock, in last term, moved in the Bail Court for, and obtained, a Habeas Corpus, directed to the keeper of the prison in Jersey. Upon this the Solicitor-general was instructed by the authorities in Jersey to move the Court of Queen's Bench for a rule to show cause why the Habeas Corpus should not be quashed, *quia improvide emanavit*. A rule nisi was granted, and the matter will be fully argued next term.

In former times, and particularly during the reign of Charles I., prisoners were sent into the custody of the military governors there. Overton was so illegally sent over and detained, and he obtained his release by Habeas Corpus, as appears in Siderfin's Report.

Charles II. was long a resident in Jersey, in Mont Orgueil Castle, where the celebrated Prynne was a prisoner. While there confined, he composed the following quaint lines,—poetry they can hardly be called:—

"Mont Orgueil castle is a lofty pile,  
Within the eastern parts of Jersey isle,  
Seated upon a rocke, full large and high,  
Close by the sea-shore next to Normandie,  
Neare to a sandy bay, where boats doe ride  
Within a peere, safe both from wind and tide;  
Three parts thereof the flowing seas surround,  
The fourth (north-westwards) is firme rockie  
ground;  
A proud high mount it hath, a rampier long,

Foure gates, foure posternes, bulwarkes,  
sconces strong:

All built with stone, on which there mounted  
lie

Fifteen cast pieces of artillery,  
With sundry murdering chambers, planted  
so

As best may fence itself and hurt a foe."

&c. &c.

It may be useful to our readers to know that persons residing there, may be sued in the courts of the Channel Islands for any debts incurred in this country. The process there is summary, and the expense of suing very moderate.

## BARRISTERS CALLED.

Michaelmas Term, 1844.

### LINCOLN'S INN.

19th November.

John Sayers, Esq.  
Edward Stirling Dickson, Esq.  
Hugh Ross, Esq.  
William Benson, Esq.  
George Charles Uppleby, Esq.  
Nicholas Darnell, Esq.  
Samuel Edward Maberly, Esq.

22nd November.

Thomas Henry Farrer, Esq.  
Richard Blanchard, Esq.  
John James Conway, Esq.  
Unwin Heathcote, Esq.  
Francis Barrow, Esq.  
Matthew Baillie Begbie, Esq.  
John Frederick Stanford, Esq.

25th November.

Thomas Henry Roper, Esq.

### INNER TEMPLE.

22nd November.

Henry King, Esq.  
Alexander Bain, Esq.  
William Holt, Esq.  
Charles Lempriere, Esq.  
William Hamilton Yatman, Esq.  
James Newton Goren, Esq.  
Richard William Fitzpatrick, Esq.  
Oliver William Farrer, Esq.

### MIDDLE TEMPLE.

8th November.

Thomas Edward Lloyd, Esq.  
William Eldridge, Esq.  
Richard Meade, Esq.  
Charles Molloy Campbell, Esq.  
George Thomas Jenkins, Esq.  
Richard Levinge Swift, Esq.  
Sidney Billing, Esq.  
Frederick Last, Esq.

22nd November.

Algernon Sidney Aspland, Esq.  
William Saunders, Esq.



Cornelius William Moffatt, Esq., M.A.  
 Henry Wilfred Ellis, Esq.  
 William Dianey Oliver, Esq., M.A.  
 James Brooksbank, Esq.  
 Edward Watkins Edwards, Esq.  
 Henry Dalton, Esq.  
 Alfred James Horwood, Esq.  
 Frederick Woodthorpe, Esq.  
 Edward Wise, Esq.  
 William Morgan, Esq.  
 William Richard North, Esq.  
 Matthew Inglett Brickdale, Esq. B.A.  
 Charles Richard Weld, Esq., B.A.  
 Henry Riddall, Esq.  
 Henry Dawson, Esq.  
 Edward Factor Matson, Esq.  
 George Harding, Esq.  
 Philip Morris, Esq.  
 John Woollett, Esq.

## GRAY'S INN.

20th November.

John Fitzpatrick Villiers, Esq.  
 Charles Skinner Troughton, Esq.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS, VIZ.:—

In the Courts of Equity, by

WM. FINNELLY, Esq., of the Middle Temple,  
 SAMUEL MILLER, Esq., of Gray's Inn,  
 E. VANSITTART NEALE, Esq., of Lincoln's Inn,  
 J. H. COOKE, Esq. of Gray's Inn.

In the Courts of Law, by

JOHN HAMMERTON, Esq., of Gray's Inn,  
 E. H. WOOLRYCH, Esq., of the Middle Temple,  
 A. P. HURLSTONE, Esq., of the Inner Temple.

## Lord Chancellor.

## LIEN.—INJUNCTION.

*Debtors abroad directed their agents in London to hold a sum of money at the disposal of their creditor, as soon as the agents should be in possession of funds, and at the same time informed the creditor of such directions; and the agents also informed him that they received such directions. The debtors afterwards consigned a ship for sale to another agent in London, and directed him to apply the proceeds to the payment of the debt; and they also informed the creditor that the ship and her freight would be available for payment of their debts in London, and his among the rest: but this agent received, by the same packet, a countermand of the direction to pay the proceeds to the creditor—*

*Held, that the creditor had not, by the correspondence, acquired a lien on the freight and proceeds of the sale of the ship.*

The object of this suit, by original and supplemental bills, was to establish a lien in favour

of the plaintiff, George Malcolm, on the freight and proceeds of the sale of the ship "Forfarshire," in satisfaction of a debt due to him from the owners, Adam, Scott, & Co., of Calcutta, and admitted to exceed 10,600*l.*, but not finally ascertained. The lien was founded on an alleged contract which the plaintiff sought to make out of a correspondence that had passed between himself and the said firm, and their London agents, Scott, Bell, & Co., and Mr. William Adam, to whom the ship and cargo had been consigned. These agents were defendants to the supplemental bill, which alleged that Adam, Scott, & Co. agreed with the plaintiff that the freight and proceeds of the sale of the ship had been applied towards payment to him of the sum of 10,625*l.*, and that they gave him a lien thereon for securing the same, and that Scott, Bell, & Co. acknowledged that lien, but that they and the other agent, Adam, confederating with the firm in Calcutta, were attempting to withdraw the freight and proceeds from the operation of the plaintiff's lien.

The correspondence on which the plaintiff chiefly relied was contained in certain letters, one dated 16th Jan., 1841, written by Adam, Scott, & Co., from Calcutta, to their agents, Scott, Bell, & Co. of London, saying they were desirous of remitting a sum of rupees, equivalent to 10,625*l.*, to plaintiff, as if by draft of that date at ten months, to be due in London the 19th of November following, and requesting them, if they should be in possession of funds, to hold the said sum at the plaintiff's disposal; another letter of the same date, written by one of the firm at Calcutta to the plaintiff, apprising him that their agents, Scott, Bell, & Co., were instructed to hold the said sum at his disposal, as soon as they should be in possession of funds; a letter dated 12th March, 1841, from Scott, Bell, & Co. to plaintiff, advising him that they had just received instructions from the firm in Calcutta to hold the said sum at his disposal, if convenient to them, and provided they should be in funds from consignments, &c., adding, that they were then considerably in advance with the said firm. There were other letters from Adam, Scott, & Co., of Calcutta, to W. Adam of London: in one dated 12th September, 1841, they wrote that the "Forfarshire" was loaded with tea for London, at 8*l.* 10*s.* per ton, and as she was to be sold, the proceeds of the freight and block could not be short of 14,000*l.* or 15,000*l.*, and a power for this purpose would be sent to Adam, as it was more in his line than Scott, Bell, & Co.'s. Another letter from the same to the same, on the 20th November, informing Adam that the bill of sale of the "Forfarshire" to him would be sent by the then next mail, added,—“You must use your best endeavours to dispose of her, and let Malcolm have a portion of his capital.” Another letter, of the 11th of December, 1841, from the same to the same, enclosed the necessary bills and power for sale of the ship, and expressed a hope that she would fetch 10,000*l.*, and desired “the proceeds to

be available to Mr. G. Malcolm." In another letter of the 18th of the same month, Adam, Scott & Co. sent W. Adam policies of insurance on the ship, which, in the event of her loss, he was to recover, and "make the proceeds available to Mr. G. Malcolm." Another letter, from the same to the same, the 22nd of the same month, after referring to the former letters, added, "When telling you to make the proceeds of the vessel, when sold, available to pay Malcolm, you will understand that the matter will be conditional, and dependant on advices from us by next packet. We have no fear of funds coming from China, but until we get them, it would not be just to pay Malcolm in preference." And in a letter of the 21st of January, 1842, and others about the same time, the Calcutta firm revoked the authority they had before given to their agent to pay Malcolm, and desired the proceeds of the ship to be remitted to themselves. The letters of December 1841, and of January 1842, came to the agent in London by the same packet.

Most of the letters are set forth more fully in the report of a motion made before V. C. Sir J. Wigram, for an injunction to restrain the London agents from remitting to Calcutta the proceeds of the sale of the ship, which was refused: 3 Hare, 39.

The motion was renewed before the *Lord Chancellor*. The *Solicitor-General* (Sir W. Follett), Mr. *Roswell*, and Mr. *Rolt* were heard in support of the motion, in the early part of the year. The arguments did not differ materially from those which were urged in the court below, and no new cases were cited. Mr. *Koe* and Mr. *Hull* were heard for the defendants, and they submitted that if any part of the correspondence could be held to give the plaintiff a charge on the proceeds of the ship, it was revoked by other parts of the correspondence.

The *Lord Chancellor* took time to read the correspondence and consider its effect.

His *Lordship*, now giving his judgment, stated the material facts of the case, and after referring to the correspondence, proceeded to observe, that three letters were written, two in December 1841, and one in January 1842, by the defendants the firm in Calcutta, to Mr. Adam. In the letters of December, the defendants had directed Adam to sell the vessel and pay 10,000*l.* to the plaintiff; but in the letter of January there occurred this passage: "You are to understand that the direction to pay Malcolm the 10,000*l.* is only conditional, and depends on the advices you may receive by the next packet." These three letters arrived by the same mail, and although written at different periods, must be looked at and treated as one set of instructions. It was quite clear, therefore, that they gave the plaintiff no lien, for they left him dependant on a future order to be sent by the defendants to their agent. On the 21st of January, the defendants wrote another letter to Adam, which was received in March. In that letter they complain that the plaintiff had sent an agent to Calcutta in order

to harass them by disputing their accounts, and they then used this language: "It was our earnest desire to give Mr. Malcolm a portion of his demand against us, but since he seems determined to dispute the accuracy of our accounts, we shall not pay him anything. We desired you to make this payment with all needful dispatch, but if he intends to give us trouble, we must combat him with his own weapons." The letter concluded by directing the sum of 10,000*l.* to be raised on the block of the "Forfarshire," and sent out to Calcutta with all reasonable dispatch. This, beyond doubt, put an end to all claim of lien under the instructions given to the agent of the defendants. But then the principal reliance of the plaintiff's counsel, in the course of the argument, was placed on the correspondence between Malcolm and the house in Calcutta. His lordship had read that correspondence with attention, and he found it amounted to nothing more than a statement of the circumstances under which the defendants, as debtors, proposed and hoped to relieve themselves from the claims of their creditor. Their obvious meaning was, that payment should be made when the "Forfarshire" was sold. They carried the matter no farther, and created no lien in favour of the plaintiff. This was the meaning of those letters, if read in connexion with the correspondence between the defendants and Adam, who was especially directed to make the payments depend on instructions from Calcutta. As the case, therefore, stood at present, the claim of lien resting solely on the correspondence between the parties, his lordship was of opinion that it did not establish such a claim, and he agreed with the Vice-Chancellor that the application for the injunction must be refused, with costs.

*Malcolm v. Scott and others*, 4th November 1844.

#### *Vice-Chancellor of England.*

#### PRACTICE.—INJUNCTION.

*Where a bill is filed for an injunction to restrain a lessor from proceeding in an action to recover rent of the premises demised, upon the ground of defect of title, it is not a sufficient equity confessed to justify the court to interfere on motion, because the lessor may, in another suit, have admitted his want of title, and such admission may have been introduced by amendment in the bill for the injunction.*

THIS was a motion on the part of the East India Company to restrain the Coopers' Company from proceeding in an action commenced by them for the recovery of rent alleged to be due from the East India Company, in respect of certain premises at Ratcliff, which had been demised to them by the Coopers' Company, and from commencing any further action on account of such rent. The Coopers' Company were trustees of the property in question,

under the will of a person named Gybson, and in 1770 granted a lease of it to the East India Company, who had expended large sums of money in erecting warehouses upon certain portions of it, and in redeeming the land tax; but having subsequently incurred a forfeiture by subletting, actions of covenant were brought against them by the Coopers' Company, whereupon they filed a bill in this court, praying to have an occupation-rent put upon the premises, and to be permitted to set off the amount of the improvements and the sum they had paid in the redemption of the land tax. They also prayed that they might be at liberty to pay into court the arrears of rent, to abide the event of an information that had been filed by the Attorney-general against the Coopers' Company, for the regulation of the charity to which the property belonged. To this information the Coopers' Company had put in an answer, by which they admitted that they were merely trustees of the property for the benefit of Gybson's charity, and that the lease they had granted to the East India Company was prejudicial to the charity, and was granted for an inadequate consideration. The admissions in this answer had been introduced by the East India Company by amendment into their bill, and in this state of the record the present motion was made, by which it was also asked that the arrears of rent might be placed *in medio* until the questions between the parties should be determined.

*Stuart, Wigram, and Lloyd* said, that if the Coopers' Company were allowed to continue their action, they would not only be pursuing the same remedy both at law and in equity, but would be pursuing the same remedy for inconsistent rights; for in one proceeding they must affirm the lease to be good, and in the other they have declared it to be bad. They cited *Cockerill v. Cholmeley*, 1 Russ. & Myl. 418.

*Twiss and Wray*, for the Attorney-general, said, it was desirable that some arrangement should be made for securing the rent, and they therefore felt bound to support the motion; for if the lease should be vacated, according to the prayer of the information, there would be an end of the covenants.

*Bethell*, on behalf of the Coopers' Company, was not required to address the court.

The *Vice-Chancellor* said, that great pains appeared to have been taken to confuse the case. He was struck with what Mr. Stuart had stated as to the Attorney-general and the Coopers' Company being the same party, but it now appeared that the Attorney-general and the East India Company were the same party. His Honour said he must decide this motion according to what appeared upon the proceedings in this cause, for it was too much to assume that the decree in the information would be such as had been suggested, as no one could tell what that decree would be, or whether there would be any. On the present pleadings it appeared, that although the Coopers' Company might have put in such an an-

swer as had been represented in the amendments to the bill in this suit, yet they now denied that they were trustees, and he had no admission before him that they were trustees in the sense contended for by the Attorney-general. There was, therefore, no equity confessed, and this motion was a mere experiment without any foundation, and must be dismissed, with costs.

*East India Company v. the Coopers' Company.*  
November 14th, 1844.

### Queen's Bench.

(Before the Four Judges.)

#### PROHIBITION.—ECCLESIASTICAL COURT.

*A parish consisted of two townships or hamlets, a church rate was made upon both townships, and an inhabitant of one of them refused payment of the rate, on the ground that the hamlet in which he resided was a separate and distinct parish. For his refusal to pay the rate he was libelled in the Ecclesiastical Court. On an application for a writ of prohibition, the court was of opinion that the rule should be made absolute for the complainant to declare in prohibition, though the nature of the case was not such as to require the rule for the prohibition to be absolute at once.*

THE parish of Long Bennington consisted of two townships or hamlets, Long Bennington and Foston, having only one parish church. A joint rate was made on the inhabitants of both townships for the repairs of the church. Thomas Dally, the chapelwarden of the township or hamlet of Foston, refused payment of the church rate, on the ground that Foston was not a township or hamlet belonging to Long Bennington, but a separate and distinct parish. Dally was libelled in the Ecclesiastical Court, and his answer was, that Foston is a separate and distinct parish, and therefore the inhabitants cannot be called upon to contribute towards a joint rate made upon the inhabitants of Long Bennington and Foston. The question therefore for the decision of the Ecclesiastical Court was, whether Foston was a division of Long Bennington or a separate and distinct parish. On this state of facts a rule nisi had been obtained for a writ of prohibition.

Mr. Kelly showed cause.

The question whether Foston is an independent parish or a division of another parish, is now before the Ecclesiastical Court, and that is a competent tribunal to decide such questions.

Lord Denman, C. J., said he thought this was a case in which the plaintiff ought to be called upon to declare in prohibition.

Mr. Martin contended, that the rule for the prohibition ought to be absolute at once. The circumstances of the case have already been before the court in *Regina v. Dalby*, where the

only question decided by the court was the invalidity of the rate. The proper mode of proceeding would be to have a good and valid rate made, and to enforce that rate by mandamus, by which means the question now before the Ecclesiastical Court can come to be decided by a competent tribunal. The question whether Foston is a separate parish or not, involving as it does a question of immemorial custom, is not one that can be decided by the Ecclesiastical Court, it is beyond their jurisdiction. When this court sees that an inferior tribunal is exercising a jurisdiction which it does not possess, a writ of prohibition is issued at once, and the parties are not put to the expense and delay of declaring in prohibition. It is so laid down by Lord Mansfield in *St. John's College Cambridge v. Todington*.<sup>b</sup> In two very recent cases, (*In the matter of the Chancellor of the University of Oxford v. Taylor*,<sup>c</sup> and *In the matter of the Dean of York*,<sup>d</sup>) the court directed the writ of prohibition to issue at once, and said, that entertaining no doubt on the subject it would not put the complainant to declare in prohibition. The question here is beyond all doubt, that the Ecclesiastical Court has not jurisdiction to entertain this question, and therefore the writ should issue at once without putting the parties to the expense of declaring in prohibition.

Mr. Kelly contended that the expense and delay would be as great if a mandamus was granted, as if the party was called upon to declare in prohibition. By adopting the latter method of proceeding the question could be fairly raised before the court, and the parties would obtain a final decision.

Lord Denman, C. J. After what we have seen of the earlier precedents, we think that we ought not to prevent any party who thinks he has a right to establish from trying it in the most solemn manner. If afterwards he finds reason to think that he has no such right, he will give up the attempt to try it. And in the end, the costs will fall upon the party who is in the wrong.

Rule absolute to declare in prohibition.

*Rimington v. Dally*. Michaelmas Term, 1844.

### Queen's Bench Practice Court.

PRACTICE.—WRIT OF SUMMONS.—INDORSEMENT OF DEBT AND COSTS.—QUI TAM ACTION.

*The rule of H. T. 2 W. 4, pl. 2, requiring an indorsement of the amount of debt and costs upon process served for the payment of any debt, only applies to actions for the recovery of a debt arising between the parties by way of contract, and does not extend to qui tam actions.*

*Atkinson* had obtained a rule calling upon the plaintiff to show cause why the copy and

service of the writ of summons should not be set aside for irregularity, on the ground that the amount of the debt and costs had not been indorsed on the writ pursuant to Reg. Gen. H. T. 2, W. 4, pl. 2, which requires that, upon every bailable writ and warrant, and upon the copy of any process served for the payment of any debt, the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ, &c.

The action was brought against the defendant as the proprietor and publisher of the *Sun* newspaper, for the recovery of penalties under the 6 & 7 W. 4, c. 66, (an act to prevent the Advertising of Foreign and other Lotteries,) and in the writ the plaintiff was described as suing, as well for the Queen as for himself, but there was no indorsement upon it of the amount for debt and costs.

*Wordsworth* showed cause. The rule of court in question only applies where the action is brought for a debt or sum certain, i.e. where a liquidated amount is sought to be recovered, and not to qui tam actions, in which the amount of the penalty is only ascertained by the trial. This is like the proceeding under the 5 & 6 W. 4, c. 75, s. 54, (Municipal Corporation,) and in *Davis v. Lloyd*,<sup>a</sup> it was decided to be unnecessary to indorse the amount of debt and costs on a writ issued to recover penalties under that act. Nor is the indorsement necessary upon a bail-bond, *Smart v. Lovick*,<sup>b</sup> or on a replevin bond, *Roveland v. Dakeyne*.<sup>c</sup> The principle of those cases is equally applicable to the present. But assuming the indorsement to be necessary, the form of the rule is erroneous. It asks to set aside the copy and service, whereas, in a case in which there is a defect in point of form equally applying to the writ and copy, the motion should be to set aside the writ and copy; as there must be some irregularity in the service to warrant such a motion as this. *Anon.*<sup>d</sup>

*Atkinson* in support of the rule. — The present case is distinguishable from *Davis v. Lloyd* and the other cases cited. The action in *Davis v. Lloyd* resulted not merely in a debt, but brought with it other consequences, viz. disability to vote and hold corporate offices. This action is for the penalties alone, a fixed and ascertained sum of £50. The fact that the penalty goes partly to the informer and partly to the Queen is a reason why the defendant is entitled to know the amount claimed. If the amount were indorsed, the defendant might choose to pay, and so put a stop to further proceedings. The same distinction exists between the present proceeding and an action on a bail-bond or a replevin-bond, which lies for a breach of the condition of the bond, in not putting in bail, &c., and sounds in damages, and is not brought for the recovery of a definite amount.

<sup>a</sup> 1 Burr. 189. <sup>c</sup> 1 Q. B. R. 952.

<sup>d</sup> 2 Q. B. R. 1.

<sup>a</sup> 6 D. P. C. 173.

<sup>c</sup> 2 D. P. C. 832.

<sup>b</sup> 3 D. P. C. 314.

<sup>d</sup> D. P. C. 651.

As to the form of the rule, it is correct in asking to set aside the copy of the writ. The omission to comply with this rule of court is an irregularity; *Riley v. Boissomias*.\*

*Patteson, J.*—I really think it quite clear that the rule of Court in question does not apply to the present case. And when it speaks of process served for the payment of a debt, it must mean the payment of a debt subsisting between the plaintiff and the defendant by way of contract, and not in a *qui tam* action given for the breach of the provisions of an act of Parliament to which penalties are attached. The case of *Davis v. Lloyd* is not precisely the same as the present. One of the judges there indeed alluded to the other consequences flowing from the proceeding, but I do not consider that as affecting the present case. To decide that, it is only requisite to look to the plain language and object of the rule, and when that is clear, I think there can be no doubt that it will be found merely to apply to actions brought for the recovery of a debt due to the particular plaintiff who sues, and not for a penalty which may be recovered by any one who may think proper to bring a *qui tam* action. It may or may not be that the defendant could be in a better condition by having the amount indorsed, but that is no ground for putting a strained construction upon the rule, the meaning of which is obvious, viz. that it relates to debts strictly so called existing between the parties.

Rule discharged with costs.

*Hobbs v. Young.* Mich. Term, Q. B. P. C., 1844.

### Exchequer.

#### ATTORNEY.—TAXATION AFTER VERDICT.— SPECIAL CIRCUMSTANCES.

*The 37th section of the 6 & 7 Vict. c. 73, enables the court, under "special circumstances," to refer an attorney's bill for taxation after verdict. Held, that the "special circumstances" must be some new facts which have recently come to the knowledge of the party, therefore where a party sued for costs let judgment go by default, and twelve months after applied to the court, they refused to interfere, though it appeared that he had a good defence to the action.*

A RULE had been obtained calling on an attorney of the name of Whicher, to show cause why his bill of costs should not be referred for taxation, under the 6 & 7 Vict. c. 73, s. 37. It appeared from the affidavits that Whicher had been applied to by one Thomas to superintend the taxation of a bill of costs incurred by Thomas, in preferring certain indictments against a person of the name of Sherwood. Whicher agreed to make no charge beyond the amount taken off the bill on taxation, but he objected to attend the taxation himself, as he had been the attorney of Sherwood, and he re-

commended for the purpose another attorney of the name of Boson. Thomas was afterwards obliged to pay to Boson a sum of 38*l.* for his charges, Boson contending that he acted on his own account, and not as the agent of Whicher. Whicher then brought an action against Thomas for his charges, amounting to 31*l.* 18*s.*, but which was less than the sum taken off the bill of costs on taxation. To this action Thomas let judgment go by default, and on the 3rd November 1843, a *fiat facias* issued, under which, a day or two after the debt and costs were paid. The present rule, which sought to tax the bill of costs for which that action was brought, was moved on the 4th November 1844.

*Crowder* showed cause. First, this court has no jurisdiction in the matter. The costs were not incurred for business done in court. *Ex parte King*, 3 Nev. & Man. 437; *Doe d. Palmer v. Doe*, 4 Dow. P. C. 95; and the 37th section of the 6 & 7 Vict. c. 73, provides, that "in case no part of such business shall have been transacted in any court of law or equity, it shall be lawful for the Lord Chancellor or Master of the Rolls to refer the bill for taxation." Secondly, the application is too late. After verdict or writ of inquiry, executed in an action for the recovery of the costs, (which is the present case,) the court cannot refer the bill for taxation, "except under special circumstances to be proved to the satisfaction of the court or judge to whom the application for such reference shall be made." The term "special circumstances" means facts which have come to the knowledge of the party after the recovery by action, but in this case there is no fact which was not equally known to Thomas at the time the action was brought.

*Jervis*, in support of the rule. These costs were incurred in the taxation of a bill of costs for business done in court, and that is sufficient to give this court jurisdiction. The term "special circumstances" does not mean circumstances intervening after action. Under the old law, if a party paid a bill, to which he had a defence, he might afterwards apply to the court for its taxation. [*Parke, B.* That is, if he was taken by surprise, or was grossly ignorant, or had misconceived the case; but then he was bound to come within the four days allowed for moving, to set aside a verdict.] In this case Thomas has been deceived by Whicher, who ought to have distinctly told him that he would have to pay Boson's charges. Besides, the affidavits admit the receipt of 5*l.* for which credit has not been given.

*Pollock, C. B.* The rule ought to be discharged. It appears that Whicher was employed by Thomas to investigate a bill of costs, and he agreed to waive all charges except as to the amount taken off the bill of costs. It seems further, that Thomas resorted to another attorney of the name of Boson, without making any stipulation with him as to payment. From the long period which has elapsed since the money was levied, there is reason for supposing that Thomas for some time thought that, as he

had employed Bozon he ought to pay Bozon, and that as the claim of Whicher fell short of the amount deducted from the bill of costs, he ought also to pay him; and that only in consequence of some new light the present application is made. Thomas does not state in his affidavit that the employment of Bozon was a fraud on him, and it is consistent with the state of facts, that Thomas may have acquiesced under a notion that all that was done, was in accordance with the agreement between the parties. Thomas gives no explanation as to how it occurred that he made no application to set aside the verdict until nearly a twelvemonth after the money was paid. It appears to me that the "special circumstances" under which the court will interfere after verdict, ought to be of some matter newly come to the knowledge of the party, so as to show that he has used due diligence in applying to the court. But when a party with a full knowledge of all the circumstances acquiesces for the entire period of a year, and then comes to the court—not with any complaint that he has been improperly sued, but relying on facts of which he was always aware, these are not "special circumstances" under which the court will interfere. At this distance of time the rule ought to be discharged, but as the allegations are not denied by Whicher, he is not in a situation to set up his own proper conduct in answer, and is therefore not entitled to costs.

*Parke, B.* concurred.

*Rolfe, B.* In *Lee v. Wilson*, 2 Chit. rep. 63, which was a rule to tax an attorney's bill after verdict, it was admitted on all hands that the application was unheard of before, and the court took especial care, by imposing terms, to prevent its being drawn into a precedent. Here we are asked in effect to set aside this verdict, not on the ground of excess, but because the defendant knew that he had a defence to the action.

Rule discharged without costs.

In re *Whicher*. Exchequer, M. T., 25th Nov. 1844.

## CHANCERY CAUSE LISTS.

### Lord Chancellor.

*Michaelmas Sittings, 1844.*

#### APPEALS.

S. O.	{	Clun Hospital	El. Powis	appeal
		Attorney-Gen.	Ditto	and petn.
S. O.	{	Marq. of West-		
		minster	Morrison	appeal
S. O.	{	The Sheffield	The Sheffield and Rother-	
		Canal Com-	am Railway Company	
		pany		appeal
Day to	{	Falkland	Hartley	appeal pt. hd.
be		Strickland	Strickland	
fixed	{	Ditto	Beyston	Ditto
		Ditto	Strickland	
	{	Spalding	Rading	ditto
		Miller	Craig	ditto

S.O.G.	{	Cochrane	Craig	ditto
		Lord	Colvin	ditto
S.O.G.	{	Davenport	Bishop	ditto
S.O.G.	{	Clifford	Turrell	ditto
S.O.G.	{	Forbes	Peacock	ditto
	{	Mqs. of Hertford	Ld. Lowther	appeal
	{	Ditto	Ditto	ditto
		Tylee	Hinton	ditto
		Miln	Walton	ditto
		Sandon	Hooper	ditto
S. O.	{	Vandeleur	Blagrave	ditto
		Crosley	Derby Gas Co.	ditto
		Parker	Balt	ditto
		Ladbroke	Smith	ditto
S. O.	{	Hitch	Leworthy	ditto
		Coore	Lowndes	ditto
		Drake	Drake	ditto
		Dalton	Hayter	ditto
		Beggett	Meux	ditto
		Payne	Banner	ditto
		Dobson	Lyall	ditto
		Moorat	Richordson	ditto
		Millbank	Collier do. for want of par.	
		Deeks	Stanhope	3 appeal
		Wilshire	Rabbitt	appeal
		Smith	El. of Eppingham	ditto
		Archer	Hudson	ditto
		Turner	Newport	ditto

### Vice-Chancellor of England.

#### PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

		Thelluson	Ld. Rendlesham	demur.
To fix	{	Richards	Wood	cause
a day	{	Richards	Wood	exons. and fur. dirs.
pt. hd.	{	Montague	Cator	fur. dirs. and
Dec. 13	{	Ditto	Tebbs	costs
	{	Ditto	Kenworthy	cause
		Templeman	Brelesforth	
S. O.	{	Freeman	Roberts	4 causes
S. O.	{	Roberts	Marchant	part heard
	{	Boydell	Golightly	fur. dirs.
	{	Ditto	Stanton	
	{	Ditto	Moreland	cause
	{	Wilson	Wilson	
	{	Ditto	Ditto	
	{	Ditto	Foster	
	{	Breame	Hawkins	
	{	Ditto	English	
Dec. 13	{	Williams	Williams	
		Palmer	Horton	
Dec. 8	{	Baxter	Atkinson	fur. dirs. & costs.
		Boazman	Camenove	at request of defts
		Cradock	Piper	4 causes exons. 2 sets
		Johnson	Johnson	3 causes fur. dirs.
		Shute	Shute	fur. dirs. and petn.
		Rogers	Roger	ditto and costs
	{	Greenwood	Taylor	exons. 2 sets
	{	Cox	Pearce	
		Preston	Melville	fur. dirs. and costs
		Watson	England	exons. & fur. dirs.
		Pearce	Brooke	5 causes fur. dirs.
		Knight	Wilmot	exons. 2 sets
		Pemberton	Jackson	
Short	{	Player	Watson	
	{	Williams	Ditto	
		Smith	Weatherby	5 causes
		Hastlewood	Partridge	
	{	Goldie	Greaves	fur. dirs. and
	{	Do.	Rastbtham	costs
	{	Mapp	Ellcock	
	{	Do.	Scott	

Jeffe ys	Hoare
Grand Junction Canal Co.	Dimes at request of deft.
Snare	Baker
Flight	Rowley
Marshall	Marshall
Emerson	Gibbins fur. dirs. and costs
D'arcente	Salomons
Dickson	Moss
Goldabrough	Hawdon
{ Hiles (pauper)	Moore }
{ Do.	Gleadon }
{ Snow	Hole }
{ Do.	Sime }
S. O. Sapsworth	Sapsworth
Flint	Warren 6 caus. fur. dirs & pnt.
Christ's Hospital	Grainger exons
Clowes	Stanton fur. dirs. and costs
Short { Att.-Gen. and Meshiter Glyn ditto	
{ Ditto	St. Katherine's Dock Co.
{ Fyson	Foster
{ Ditto	Mackreth }
Gurney	Goggs fur. dirs. and costs
Jackson	Brooke
Middleton	Elliott
Beauchamp	Lygon fur. dirs. and costs
Short Borton	Marsh
Barnacle	Nightingale exons
Ferris	Willy fur. dirs. and petn.
Pearse	Parker
Gray	Gray
Short Lloyd	Lever
Aubery	Hoper 5 caus. fur. dirs. & csts.
Casley	Monypenny
Brooke	Todd
Casley	Monypenny
Miller	Harris
Brooke	Todd
Casley	Monypenny
Sinnett	Matthias

## Vice-Chancellor Knight Bruce.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

M.Tm. { Dodsworth	Kinniard at request of defts.
1845. { Do.	Ditto
Hy.Tm. Clayton	Ld. Nugent fur. dirs. & costs
Last day { Doyne	Cartwright } fur. dirs. and
of causes { Ditto	Cary } costs
Wood	Cooper part heard
Gross	James fur. dirs. and costs
{ Sutherland	Cooke } ditto
{ Do.	Jackson }
Thwaites	Foreman
Stooke	Vincent plea
Wright	Gill deft.'s objn. for want of parties
{ Adams	Paynter }
S.O.G. { Ditto	Lloyd }
{ Ditto	Paynter }
Bugg	Hobson
Norton	Pritchard 4 causes fur. dirs.
Douglas	Douglas 4 causes { & costs
Ditto	Ditto 4 causes
Gibson	D'Este exceptions
Dec. 10 Evans	Scott
Soulsby	Manning
Dec. 9 { Bury	Allen }
{ Do.	Pinnell }
Dec. 9 Roberts	Roberts
Dec. 12 Brocklebank	Rolles
Dec. 13 Stringer	Court
Short Reed	Reynolds

Dec. 16 Jones	Lewis
Dec. 12 Tween	Haswell
Dec. 18 { Hamond	Swayne }
{ Ditto	Dickinson }

## Vice Chancellor Stigram.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Dec. 3 Dickin	Barker demr.
H. Tm. Broad (pauper)	Robinson
Ditto Barnett	Deane
To fix { Vincent	Bishop of Sodor and Man
a day { Neeld	Dk. of Beaufort } 2 causes
S.O.G. { Ditto	Austin }
pt. hd. Millalieu	Miller fur. dirs. & eqy. read.
Lee	Pain exons. 4 sets
Dec. 21 Massey	Moss fur. dirs. and costs
{ Sharp	Collard } cause and
{ Ditto	Bolton } petition
{ Parker	Carter
{ Ditto	Parker
Hy. { Ferrand	Wilson }
Tm. { Ditto	Turner }
Massey	Whichello
{ Emperingham	Short } exons. and fur.
{ Ditto	Newton } dirs.
Finch	Lipscomb
Brooks	Jopling
Davies	Davies
Oddie	Tattersall
Moore	Stafford
Barrett	Buck
Paget	Belcher
Morrison	Morison exons.
Next T. Challen	Shippen
Kay	Wall exons.
Att.-General	Northote
Aspineli	Andus fur. dirs. and costs
Hughes	Lipscombe
Smith	Beasley exons.
Cuttel	Crowther
Coltman	Harrison

## COMMON LAW SITTINGS.

After Michaelmas Term, 1844.

## Queen's Bench.

London Adjournment day, Monday Dec. 9.

## Common Pleas.

London Adjournment day, Monday Dec. 9.

## Exchequer of Pleas.

London Adjournment day, Wednesday Dec. 11.

## BANKRUPTCY—DIVIDENDS DECLARED.

From 29th Oct. to 29th Nov., 1844, both inclusive.

Andrew, J., Maryport, Cumberland, Banker. Div. 1s. 1d.

Arnold, T., 48, Paternoster Row, Bookseller and Publisher. Div. 1s.

Ashham, R. D., late of Knottingley, York, Lime Burner and Coal Merchant. Div. 18s. 4d.

- Atkinson, J. R., Caistor, Lincoln, Wine and Spirit Merchant. Final div. 3d.
- Ball, W., 32, Paternoster Row, Bookseller and Publisher. Div. 15s. 3d.
- Balme, J. N., Leeds, Woolstapler. Final div. 2s. 2½d.
- Banister, C. J., Rotton Row, Derby, Linen Draper. Div. 5s.
- Banister, R., Portsea, Hants, Draper. Div. 8s.
- Barker, R., Manchester, Druggist. Div. 4s. 6d.
- Bent, J., Dudley, Worcester, Grocer. Div. 6d.
- Brook, T., Longwood, Huddersfield, York, Woollen Cloth Merchant. Final div. 2d.
- Brothers, S., and J. Tittensor, deceased, Newcastle-under-Lyne, Carriers. Div. 1s. 10d. (on separate estate of S. Brothers. Div. 5s. 6d.)
- Carpenter, W., Chippenham, Wilts, Innkeeper. Div. 3s.
- Carruthers, J., Mitchells, Speldhurst, Kent, Distillers. Div. 1s. 9d.
- Cecil, J., T. Dennison, J. Benson, and W. Dennison, Liverpool, Merchants. Div. 9d.
- Darcy, J., and R. Dierden, Sutton, Lancaster, Alkali Manufacturers. Div. 2½d.
- Denver and Nixey, Liverpool, Woollen Drapers. Div. 6s. 3d.
- Dickinson, W., and T. Thorp, Blackburn, Lancaster, Iron Founders. Div. 7s. 2½d.
- Dixon, H. J., and J. Dixon, Kidderminster, and of Aldermanbury, Carpet Manufacturers. Div. 13s. 4d., (on separate estate of H. J. Dixon, div. 20s.)
- Elliott, C., Leeds, Tallow Merchant. Final div. 1s. 2½d.
- Emmerson, E., Manchester, Manufacturer. Div. 2s. 0½d.
- France, W., Wigan, Lancaster, Grocer. Div. 9s. 6d.
- Gowing, J. S., Lowestoff, Suffolk, Grocer. Div. 2s.
- Green, T., and J. Vanderplank. Final Div. 1s. 6d.
- Gregory, T., Poulshott-Mill, Poulshott, Wilts, Miller. Final Div. 2s. 6d.
- Hague, D., Horsforth, Guisley, York, Paper Manufacturer. Div. 1s. 6d.
- Harbottle, J., Amble, Northumberland, Grocer and Draper. Div. 6s. 6d.
- Harwood, G., Chester, Draper. Div. 7s. 6d.
- Hazard, T. O., and H. Bingham, Sheffield, Merchants. Div. 4d.
- Hentig, R., Kingston-upon-Hull, Merchant. Div. 3s. 4d.
- Hipkins, E., Liverpool, Commission Agent. Div. 4d.
- Howe, R., Kilpin, Howden, York, Corn Factor. Final div. 7s. 0½d.
- Hocknell, G., Stone, Stafford, Innkeeper. Final div. 5½d.
- Hurst, R., Newcastle-upon-Tyne. Div. 4d.
- Kearsley, T., Tyldesley, Lancaster, Cotton Spinner. Div. 1s. 8½d.
- Knapton, J., and W. M'Kay, Manningham, Bradford, York, Stuff Manufacturers. Final div. 2s. 2d.
- Llewellyn, M., Neath, Timber Merchant. Div. 2s. 4d.
- Loraine, J. L., Newcastle-upon-Tyne, Wine Merchant and Commission Agent. Final div. 1s.
- Masiglier, A., Mincing Lane, Merchant. Div. 1d.
- Manning, F. J., Dyers Buildings, Money Scrivener. Div. 3½d.
- Meadows, J., Wavertree, Liverpool, Miller. Div. 2½d.
- Miller, T., Liverpool, Hosier and Draper. Div. 3s. 5d.
- Monk, W., Junr., Nottingham, Currier, &c. Div. 9s. 3d.
- Newman, R. D., Leeds, Corn Factor. Div. 4. 9d.
- Newton, S., Holbeach, Lincoln, Cattle Dealer. Div. 7d.
- Nicholson, W. F., Warley, Halifax, York, Worsted Spinner. Div. 4s.
- Pearson, H., York, Attorney and Common Brewer. Final div. 3s. 2½d.
- Peel, J., C. Harding, and W. Willock, Fazeley, Tamworth, Manufacturers and Cotton Spinners. Final div. ½d.
- Petrie, J. C., Bedlington, Durham, Miller and Grocer. Div. 7d.
- Pitt, H., Selby, York, Wine Merchant, &c. Final div. 4s. 0½d.
- Proctor, N., Meanwood, Leeds, Tanner. Final div. 2s. 6d.
- Rawlings, T., Cheltenham, Auctioneer, &c. Div. 2s. 6d.
- Rimmer, R., Liverpool, Tailor and Draper. Div. 5d.
- Robinson, E. B., Nottingham, Printer. Div. 9s.
- Robinson, G., Huddersfield, York, Surgeon, and M. Farrand, Almondbury, York. Div. 2s.
- Rues de Alzedo, J., Bank Buildings, Merchant. Final div. ½d.
- Sadler, G., Cheltenham, Linen Draper and Grocer. Div. 1s. 8d.
- Sayle, B., and T. Booth, Park Iron Works, Sheffield, and of Tinsley Park, York, Iron Masters, &c. Div. 5s.
- Slagg, T., Manchester, Merchant. Div. 3s. 8½d.
- Smith, D., Midgley, Halifax, York, Worsted Manufacturer. Final Div. 2s. 11d.
- Sotherr, R. D., St. Helens, Lancaster, Ship Builder. Div. 4½d.
- Southern, T., Gloucester, Grocer. Div. 5s.
- Speakman, S., Preston, Lancaster, Ship Builder. Div. 8½d.
- Stevens, R., New Cut, Lambeth, Dealer in China and Glass. Div. 1s. 1½d.
- Stockdale, R., Crosby Square, Merchant. Final div. 3½d.
- Thorp, T., Chertsey, and of Woking, Surrey, Plumber. Div. 2s. 2d.
- Turner, H. F., Myddleton Street, Clerkenwell, Painted Baize Manufacturer. Div. 2s.
- Turton, W., Westbromwich, Stafford, Coal and Iron Master. Div. 6½d.
- Vanderplank, B. and S., Saville Row, Burlington Gardens, Woollen Drapers. Final div. 11d., (on separate estate of B. Vanderplank. Final div. 1s. 2d.)
- Vanzeller, J., Gt. Winchester Street, Merchant. Div. ½d.
- Vernon, J., Monks Coppenhall, Chester, Victualler. Div. 2s. 4½d.
- Walford, W. Div. 1s. 0½d.
- Walker, W., and J. Gray, Leeds, Woolstaplers. Final div. 1s. 10½d.
- Walters and Llewellyn, Neath, Timber Merchants. Div. 3d.
- Ward, J., Nottingham, Tailor and Woollen Draper. Div. 1s.
- Weatherby, E., J. H. Ford, W. L. Hilton, R. Addison, and R. Gibson, Holywell, Flint, Bankers, (on separate estate of W. L. Hilton. Final div. 20s.)
- Webb, C. H., Forebridge, Corn Dealer. Div. 4d.  $\frac{1}{2}$  of a penny.
- Wheeler, W., and E. Oxford, Saddlers. Final div. 4½d.



Williams, T. and E., Church Street, Liverpool,  
Linen Drapers, (on separate estate of T.  
Williams. Div. 89s.)

## PRICES OF STOCKS.

Tuesday, Dec. 3rd, 1844.

Bank Stock div. 7 per Cent. . . . .	207½ a 7
3 per Cent. Reduced Annuities . . . . .	100½ a 1
3 per Cent. Consols Annuities 401½ a 100½ a 1	100½ a 1
New 3½ per Cent. Annuities . . . . .	102½ a 1
Long Annuities, expire 5th Jan. 1860 . . . . .	12½ a 12½
Ann. for 30 years, expire 30th Oct. 1859 . . . . .	12½ a 12½
India Stock, 10½ per Cent. . . . .	290 a 88
South Sea Stock div. 3½ per Cent. . . . .	116½ a 16
3 per Cent. Cons. for opening, 17 Jan. . . . .	101½ a 1
Exchequer Bills, 1000l. 1½d . . . . .	58s. a 5s. 6s. pm.
Do. 500l. " . . . .	58s. a 5s. 6s. pm.
Do. small " . . . . .	58s. a 5s. 6s. pm.

## NOTES OF THE WEEK.

### BARRISTERS.—CIVILIANS.

AT the latter part of the last term, Mr. Kelly informed the Court of Queen's Bench that it was the intention of two learned doctors of the civil law to address their lordships in a case which was to come before the court.

Lord Denman, after having consulted the other judges, said that it might be necessary for the court to do some act antecedent to the admission of the learned persons in question to address the court, as the proceeding was not a matter of course.

We understand that this is not the first instance in which advocates from Doctors' Commons have been heard in a court of common law, on questions bearing on the civil law.

### TRIAL OF COMMON JURY CAUSES.

The Lord Chief Baron, on Wednesday last, the 4th instant, stated his determination not to allow any common jury cause to be put down in the same list with the special juries for the future. In his own experience at the bar, the opposite practice had been felt and admitted to be a grievous tax on suitors, and even so far back as Lord Ellenborough's time, it had been complained of. Feeling the justice of these complaints, he had resolved to adopt the course now intimated in all cases, *except* in undefended actions, or causes wherein verdicts might be taken by consent, or where parties, for especial reasons, might agree to take their chance, and he was sure that great benefit would result from the general introduction of such a course of business. His lordship added that it was much better to run the risk of occasionally

losing a portion of the day devoted to special juries, for want of common juries, than to entail on the suitors the certainty of unavailing and heavy expenses.

Mr. Jarvis, Mr. Martin, and Mr. Humphrey, expressed the satisfaction which this announcement would cause to their clients and the bar.

We are glad that the Lord Chief Baron has thus attended to the representations which the profession has from time to time made regarding this grievance, and we trust that the Chiefs of the Queen's Bench and Common Pleas will establish the same rule in their Nisi Prius Courts. In the latter court we are aware of a recent instance in which witnesses were in attendance day after day for upwards of a week.

### NEW EQUITY COURTS AT WESTMINSTER.

It is reported that government is about to provide some means for the new Vice-Chancellors to hold their courts near Westminster Hall, instead of going over to the session-house when the magistrates are not sitting, or resorting to other places in the vicinity. These expedients have occasioned great inconvenience to the bar, and strong remonstrances having been made, *something* is to be done, but to what extent does not clearly appear. We think the old hall may be made available, as it used to be in the olden time, but we trust that the accommodation will only be *temporary*, lest it should interfere with the great object of the removal of the courts to the neighbourhood of Chancery Lane.

In addition to the provision for the judges and the bar, the convenience of suitors, solicitors, and witnesses should also be considered. There is ample room in Westminster Hall to provide temporary waiting-rooms for all parties attending on the several courts, and these arrangements will be very proper till the houses of parliament are completed and the courts removed.

### THE EDITOR'S LETTER BOX.

THE letter of Z. on the evils of Courts of Request shall be inserted.

If B.'s mode of transacting the business of C. can be deemed legal agency business, there seems no doubt that the service to B. will be sufficient.

We have received some other queries which shall be considered.

# The Legal Observer, OR, JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 14, 1844. }

———"Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.

HORAT.

## PUBLIC LEGISLATION.

THE rule of modern legislation appears to be, "legislate first, inquire afterwards." We are not disposed to blame any one for this. Indeed it is the great evil of the present system that no one can properly be blamed. There is no efficient responsibility on any one. This act is called by the name of this minister; that act by the name of that statesman or lawyer; but we all know, that although they may know and be responsible for the principle or intended principle of the measure, yet they cannot always undertake to settle its details, far less its language. One obvious reason of this is, that in its passage through parliament, an act may be, and very frequently is, most materially altered. No sooner is a bill proposed, than half a dozen members, often of both houses, come with their amendments, clauses, or alterations; it is frequently the object of the mover, not to invite, but to prevent discussion, and with this view these amendments and clauses creep in, and by the time that the bill has been thus *dootored*, and fattened, and changed, its supposed father cannot recognize his own child. A young legislator, after having brought in one or two bills, and made one or two speeches, which were well received, was called aside by an older and much more experienced member, and was thus addressed: "You are a useful man, and you are doing good; let me give you one word of advice: if you wish to pass your bill, do not say a word about it; watch your time and move it on, but as you value its success and your own, don't let anybody or anything induce you to say

a word about it. If you do, you run two deadly risks: you will in all probability be voted a bore,—a character the most fatal to your reputation; but at all events you *will call attention to your measure*, which, if you wish to pass it, you will never do." Now this is clearly a state of things which should not, if it can be prevented, be suffered to continue. If we wished for instances of the evil of which we complain, we need only turn to the acts of last session, and more especially the Transfer of Property Act and the Bankruptcy Act; and if we wanted a very recent and authoritative expression of opinion as to them, we need only cite that of that able and cautious judge, Mr. Justice Patteson, who, in a very late case on the Poor Law Act of last session, said, "I really do not know what is the meaning of this act, or of half the acts that are passed."

This being the state of the case, we are glad to find that the Society for Promoting the Amendment of the Law have directed their attention to this subject, and that one of the committees of that society has made a report on the subject, which has been printed in the number of the *Law Review* just published. This report is so short and appropriate that we shall print it entire:—

"The defects of the present mode of preparing and carrying through public bills in parliament have been long very generally admitted. They have been the subject of constant complaint by the judges, and were referred for inquiry to a select committee of the House of Commons in 1836.

"Some progress has been made in both houses of parliament as to the revision of private bills. In the House of Lords a general supervision takes place by the chairman of

committees and his counsel; and in the House of Commons the superintendence is effected by means of the chairman of ways and means, and the counsel to the Speaker. But no care whatever on the part of the legislature is taken as to the preparation of public bills. In the House of Lords, bills may be presented, and are usually read a first time and ordered to be printed as a matter of course on the motion of any peer. In the House of Commons, although in some cases the principle is discussed on moving for leave to introduce a bill, no precaution whatever is taken as to the mode and language in which the principle is carried into effect. The member, indeed, who moves for leave to introduce the bill is, in conjunction with one or two other members, ordered to prepare and bring in the bill; but this proceeding is a mere formality, as he does not in fact usually prepare it. The bill is then brought in, and not unfrequently in its progress through parliament it rests entirely on the individual responsibility of its promoter. If it excites no party feeling, or interferes with no vested interest, and even if it does, when its principle or fate is once decided on, its details, and still less its language, are hardly looked to by any one, and are not in many cases attentively considered, until the bill becomes the law of the land. Sometimes a particular clause, or part of a bill, is severely contested, or express attention is called to it; and then this clause or part of a bill is critically considered; but even when this is the case, all the other parts and clauses frequently pass without any proper attention being paid to them.

"Thus it may happen that a bill affecting the whole country may be drawn by a person who never drew a bill before, by one ignorant of law as a science, and possessing merely a superficial acquaintance with the usual technicalities of acts, prepared possibly after a similar fashion. There is no uniformity of expression. There is in many cases no attempt to use the same word or phrase in the same sense throughout. There is no responsibility, except a very vague one, attaching to the mover of the bill, who is rarely its draftsman.

"The bill thus passed into law sometimes remains a dead letter in the statute book, from inability to work it. In other cases, consequences result from the act which were never intended or anticipated; but at best the parties attempting to carry the measure into execution are frequently beset by the greatest doubt and difficulty. A very considerable proportion of the cases laid before counsel are occasioned by the difficulty of construing these statutes; and the same observation applies to actions and suits in the courts both of common law and equity, the time of which is taken up in expounding and settling the meaning of the legislature. But all this of course is attended with great, and sometimes ruinous, expense and delay to the parties.

"It may however be said, that legislation, in the nature of things, must be attended by disadvantages and hazards. But it is found that

where acts have been drawn by competent persons, as for instance in the acts for the consolidation of the criminal law, brought in by Sir Robert Peel, and most of the acts passed under the direction of the Real Property and Common Law Commissioners, very few doubts comparatively have arisen, although many of these acts have made great alteration in the law, and have legislated on points of much technical nicety and of constant occurrence. It is to be observed that most of the statutes to which allusion is now made passed very nearly as they were brought in.

"It may be asserted, therefore, that legislation is capable of being so conducted as to avert the evils which are now so deeply felt, and of which complaint has become so general.

"The inquiry then arises, whether it be not possible to devise some plan by which acts may be passed, which will not be attended by the evils of the present system?

"The plan which appears to this committee best calculated effectually to guard against and remedy those evils is to appoint certain persons selected from the legal profession, officers of parliament, for the examination and revision of all public bills.

"After much consideration, it appears to this committee that these officers should not be employed to draw the bills either of the government or of private members. All that they would recommend, at any rate, in the first instance is, that every bill should, after its second reading, be revised by the officers to be appointed. On the bill being so revised, it should be returned to the house of parliament in which it originated for committee; but the duty of the revising officer should not be supposed to end when the bill was so returned, but it should be their duty to watch it throughout, and attend to all alterations made in either house of parliament until it received the royal assent; and on any alterations being made, it should be referred back again to the revision of the officers.

"It does not seem unreasonable to expect that the following advantages would attend the establishment of this office, some of which are not even attempted to be gained.

"1. A uniformity of style and expression in acts of parliament.

"2. A knowledge of the existing state of that part of the law intended to be affected by the proposed measure.

"3. A greater degree of clearness in the act when passed, and thus greatly lessening the doubts as to the intention of the legislature, and the subsequent expense of ascertaining it either by opinions of counsel, or actions or suits for his purpose.

"Another great advantage that would be gained is, that competent persons would be induced to turn their attention to the framing of acts of parliament, a branch of study hitherto almost entirely neglected, and yet surely demanding exclusive attention as much as any other.

The principal disadvantages appear to be,

that the establishment of this office might lessen the responsibility which now attaches to the government and to the speaker in matters of public legislation, and that when appointed, the new officers might relax in their zeal, and leave things much as they now are.

"On the whole these disadvantages, although they deserve attention, appear to be far outweighed by the advantages which would attend its establishment.

"One difficulty which has been sometimes urged to the establishment of the officers proposed is, that it might tend to fetter individual members in the exercise of some of their powers in committee on the bill; but it is conceived that this difficulty is not very formidable. Where the committee is a select committee, one of the public bill officers might attend the committee (which is now not an unusual course for the gentleman to take who has prepared the bill) to make explanations and provide for objections. A committee of the whole house is not perhaps the best place for settling construction of language; but it would be still open to members to make objections of this nature if they thought fit, although, as there would probably be less occasion for it, so it may be considered that this privilege would not be so often acted on as now.

"It is quite possible that the office might, at some portion of the session, have a great press of work, and at others very little to do. When there was an excess of business they might have means afforded them of obtaining some assistance.

"When the house was not sitting, or when business was not so pressing, their time might be usefully employed in consolidating and digesting the statute law, or advising on what statutes are obsolete or repealed, in reporting on the state of the law affected by proposed alterations, and in the general care and supervision of the statute law. The officers might also with advantage accompany the bills which they returned to the house with a short statement of the existing law, and the effect of the proposed alteration.

"Another question of great difficulty will be, whether the new officers should continue in practice? It is considered that the chief officer, having the task of supervising the whole, should devote himself exclusively to the duties of the office. The other members might with advantage be allowed to remain in practice in the several branches of their profession.

"In effecting an object of this nature, so important to every member of the community, it is conceived that the expense to be incurred should not be the difficulty in the way of carrying it out. But it seems capable of proof that the saving that the office would effect in stopping inconsiderate and useless legislation, in shortening bills, in preventing reprints of bills in many cases, and in saving the time of the courts, which is now occupied in construing the present imperfect statutes, would amply pay for its establishment.

"For the reasons here given, and subject to

the restrictions above alluded to, this committee are of opinion that parliamentary officers to revise public bills might be appointed with great advantage, as well to the legislature as to the public."

We further understand that this subject is under the consideration of the government. The first public step of the society is, as it appears to us, in the right direction.

## THE ADMINISTRATION OF JUSTICE IN FRANCE.

We are now desirous of making a further extract from the able work on "France," to which we recently called attention, (see *ante*, p. 58). We consider it to be highly important, with reference to the establishment of Local Courts in this country:—

"The organization of the *administration judiciaire* has been so fully detailed in the first part of this volume, that very little needs to be added to prove that the ministry of justice might more properly be called the administration of injustice.

"We have seen that the 14,000 officials to whom the misnamed administration of justice is entrusted, are all appointed by the government; that the irremovableness of the judges is rendered nugatory by the scale of emoluments and the graduation of the courts; since, although a judge cannot be dismissed without a trial, he can be promoted to a higher or a more lucrative post. We have seen that, in order to render them more dependent, and make them constantly feel the desire, nay, the want of promotion, the Courts of First Instance are divided, with regard to their salaries, into seven classes, the lowest of which cannot yield to its members more than 36*l.* a year; which, by subserviency and a consequent translation to higher tribunals of first instance, may be raised to 120*l.*; that, when they are promoted from the tribunals of first instance to the royal courts, the same scale of emoluments necessarily continues to act in the same way, and with the same success, on the judges; and that, even in the supreme court, the Court of Cassation, when all judicial promotion stops, the peerage, or what they prefer, the title and the emoluments of councillor of state, afford inducements to new sacrifices of principles and honesty. The consequence is, that, in any lawsuit in which the government or any public authority are concerned, the case is always decided in their favour, or in favour of a party patronised by an influential personage.

"In cases in which private parties are concerned, there is no better chance for a sound and equitable decision, on account of the igno-

rance or venality of the judges. One may easily imagine that very few gentlemen of merit, of good families and connexions, of independent property, or enabled by their legal knowledge and their talents to rise at the bar, and to derive a competent income from their practice, will condescend to accept a judgeship with between 36*l.* and 48*l.* a year. It follows, that most of the judges in the courts of first instance are taken from among the young barristers, who either have just sense enough to know that their abilities are not likely to gain much of the public confidence, or who, having been unsuccessful in their attempt to form a *clientelle*, and preferring the paltry pittance of a judgeship to the independence of a barrister without causes and without fees, apply to the deputy of their *arrondissement*, or to some influential elector, to obtain from the ministry of justice one of the vacant places, and afterwards, if successful, do their best to deserve promotion.

"Some few, having a little property, are also induced to follow the same course, and to accept a small judgeship, as a stepping-stone to higher preferments, which they are sure to obtain if they are electors. But they generally prefer those functions called public ministry, as king's attorneys, general advocates, or attorneys-general, as they afford a more frequent opportunity of displaying their zeal. They therefore solicit the office of substitutes to the king's attorneys, which more rapidly leads to all the others; and, besides that, they have the advantage of being better paid than the judges.

"Tribunals thus composed cannot be expected to shine in a perfect knowledge of the law. The fact is, that the bar of the tribunals of first instance, or of the royal courts, is very superior to the judges and other officials, in science and in talents. This is the natural consequence of the system; but a more prejudicial consequence results from the smallness of the salaries. Is it not evident, that a gentlemanly educated man, filling judicial functions, cannot live in a style becoming his station, with a salary which can hardly provide for the first necessities of life? Is it not plain, that a judge so circumstanced cannot but be accessible to the seductions with which rank and wealth can surround his seat; that, in one word, he cannot be impartial between the rich and the poor?

"Thus, in civil cases, when the government is concerned, or when rank and fortune are interested, very little justice, if any justice at all, can be expected from the judicial bench, by any one who has nothing in his favour but his right. In criminal causes, that is to say, in the affairs subject to the decision of a jury, the case is still more hopeless.

It has been mentioned in the preceding chapter, when speaking of the elections, that the electoral lists of the departments are, at the same time, those of the jury for the same departments, with the addition of state pensioners, retired officers, persons filling public offices, and graduates of the universities. These lists

are made out every year by all the mayors of the communes, assembled at the chief town of their canton. They are then given to the sub-prefect, who sends them, with his observations, to the prefect. The prefect revises those lists, and is authorised to erase the names of those whom he considers improperly inserted, although no complaint should have been made against their insertion. The lists are then published.

Parties whose names have not been inserted in the lists, or erased, may claim their insertion, and other parties may claim the erasure of electors improperly admitted; but the prefects and the councils of prefecture adjudicate on their claims. The law, however, allows the interested parties to appeal to the royal courts from the decisions of the prefect; but the trouble, expenses, and loss of time attendant on those appeals deter most of them from defending their rights. In case the number of the electors of an electoral college should be reduced under 150, the prefect may supply the deficiency by inserting the names of persons paying less than 200 francs of direct taxes.

But all the persons entitled to serve, and inscribed on the lists, are not called in turn at the assizes. The prefects select every year from the general lists a certain number of the electors, according to their known opinions, carefully excluding the Legitimists and the Liberals, and thus secure the judgment of their political adversaries by their friends. This has been fully proved by the correspondence communicated by M. Isambert to the Chamber of Deputies, twelve months ago, in which a prefect recommended the postponement of a trial, in order to have the benefit of his improved list of electors and jurymen. Thus, the minister seems to have nothing more to fear from the courts of justice than from the representative body; and his subordinates can rely not only on his support, and on promotion, in proportion to their zeal in executing his commands, and keeping the people in due subjection, but also on the severity of the jury in case of any prosecution instituted by them against any one who dares question their authority, resist the execution of their orders, or publicly censure their measures.

"The general lists of the jury, so reduced by the prefects to one fourth of their former number, are then forwarded to the presidents of the royal courts, who, every month, take from those lists the names of the jurymen who are to form the jury during the following assizes. The forty names are drawn by lot, at least so the law orders it, and afterwards the twelve jurymen who are to try the case are chosen in the same manner by the judge, in the presence of the Attorney-general, who prosecutes, and of the prisoner.

"It might seem, that, after the careful reformation of the lists by the prefects, the public prosecutors ought not to be afraid of what they call scandalous acquittals, and to claim an extensive right of challenge. Such, however, is the case. They are by law entitled to the

half (twelve) of the challenges, and the parties accused have the same number, and no more, however numerous they be. I have seen, in a political prosecution, twenty-eight prisoners tried by ten placemen, and only two independent men, the Attorney-general having challenged all the others. Of course they gave a good verdict.

"Yet there were still two dangerous practices in the course of the deliberations of the juries. First, the jurymen expressed and debated their opinions, and it sometimes happened that one or two honest, intelligent, and courageous jurymen convinced their colleagues by the force of their arguments, or awakened in their minds a sense of duty,—a feeling of mercy. Secondly, it was easy to know the votes of every one of the jurymen, and to let the public know to whom were due the horrid sentences so frequently pronounced. To get rid of these inconveniences, the law was altered; and by the new act, every jurymen, on retiring to consider the case, receives from the president of the court a card, (*un bulletin*,) on which the question relative to the guilt of the prisoner is written, and the jury are requested to write secretly and in their turn, yes or no, under the question, and to put their cards in a box prepared for that purpose. Afterwards the foreman of the jury, in the presence of his colleagues, takes out the cards, examines them, and declares the majority for or against the accusation. By such process all discussion is precluded, and every one may condemn without fear of the consequences on the part of the public; whilst an acquittal exposes them all to the vengeance of the government. And that is what is still called trial by jury!"

## THE PROPERTY LAWYER.

### PARTITION OF COPYHOLDS.

By the Copyhold Act, 4 & 5 Vict. c. 35, s. 85, it is enacted, that from and after the passing of the act it shall be lawful for any court of equity, in any suit to be thereafter instituted for the partition of lands of copyhold or customary tenure, to make the like decree for ascertaining the rights of the parties, and for the issue of a commission of partition of the lands, as may now be made according to the practice of such court with respect to lands of freehold tenure.

But, independently of this act, a partition of copyholds cannot be decreed. See *Scott v. Faucet*, 1 Dick. 299; *Horncastle v. Charleworth*, 11 Sim. 315; *Oakley v. Smith*, 1 Eden, 261; and Lord Langdale, M. R., has recently expressed the same opinion. "This property," said his lordship, "seems clearly to be of the tenure of customary freeholds, and I have always

understood that the court has constantly declined directing a partition of copyholds, and for similar reasons, of customary freeholds. Two cases have been produced; they may be consistent with the general rule if there had been both freeholds and copyholds to be divided, and the court directed such a partition as to give the entire copyhold to one party, and the freehold, or a part of the freehold, to the other." *Jope v. Morshead*, 6 Beav. 213. This last course was taken in the case of *Dillon v. Coppin*, 6 Beav. 217 n., on a suit previous to stat. 4 & 5 Vict. c. 35, s. 85, for a partition of freeholds and copyholds, where the court directed the copyholds to be allotted *in entirety* to one of the parties.

### COVENANT FOR QUIET ENJOYMENT.

FOUR messuages were demised to the plaintiff for 60 years, at an annual rent of 60*l.*, and there was a covenant that the plaintiff, paying the rent, &c. should quietly enjoy the demised premises during the term, "without any let, suit, trouble," &c. in the usual form, "of, from, or by the lessor, his trustees or assignees, or any other person or persons lawfully claiming or to claim, by, from, or under him, them, or any of them." After the execution of the lease, the collector of land-tax entered on the premises and made a seizure of some goods, as a distress for arrears of land-tax due from the lessor before the demise. An action of covenant having been brought against the lessor for damages, the defendant demurred generally to the declaration. There was no covenant against the defaults of the lessor. And it was held that the distress for land-tax was not a proceeding within the terms of the covenant, and that the words of the covenant related to disturbance by persons claiming by title *from* the lessor; and as in the present case the clause was against him, it was not within the words of the covenant. *Stanley v. Hayer*, 3 Adol. & Ellis, 105 N. S.

## ORDER OF COURT OF CHANCERY.

### PRISONERS IN CONTEMPT.

Friday, 6th December, 1844.

THE Right Honourable John Singleton, Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and con-

sent of the Right Honourable Henry, Lord Langdale, Master of the Rolls, The Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, The Right Honourable the Vice-Chancellor, Sir James Lewis Knight Bruce, and The Right Honourable the Vice-Chancellor, Sir James Wigram, doth hereby order and direct in manner following, that is to say:—

That in every case in which application shall be intended to be made for the discharge of any prisoner in contempt, and for the payment out of the Suitors' Fund of the costs of such contempt, in pursuance of the provisions for that purpose contained in an act of the first year of the reign of his late Majesty King William the Fourth, intituled "An Act for Altering and Amending the Law regarding Commitments by Courts of Equity for Contempts, and the taking of Bills, *pro confesso*," notice in writing of such intended application shall be served upon the solicitor to the Suitors' Fund, two clear days at the least before the day upon which the application is intended to be made.

That in every case in which a reference to the Master under the said act shall be directed to inquire into the fact of the poverty of any prisoner in contempt, notice in writing of the order of reference, and of every warrant to proceed thereupon before the Master, shall be duly served upon the solicitor to the Suitors' Fund.

(Signed) **LYNDHURST, C.**  
**LANGDALE, M. R.**  
**LANCELOT SHADWELL, V. C. E.**  
**J. L. KNIGHT BRUCE, V. C.**  
**JAMES WIGRAM, V. C.**

## LECTURES AT THE INCORPORATED LAW SOCIETY.

### TRANSFER OF PROPERTY ACT.

THE lectures now in progress at the hall of the Incorporated Law Society comprise three courses: the 1st, by Mr. *Caley Shadwell*, on Conveyancing; the 2nd, by Mr. *Archibald J. Stephens*, on Common and Criminal Law; and the 3rd, by Mr. *John Adams*, on Equity and Bankruptcy. These lectures, which are delivered every Monday and Friday evening, are too voluminous to be reported in these pages; but we are enabled to state the substance of Mr. Caley Shadwell's able lectures, so far as they relate to the recent act, 7 & 8 Vict. c. 76, entitled "An Act to Simplify the Transfer of Property," and which will come into operation on the 1st of January, 1845. As every comment on the act must be read with interest by the profession, we shall give this portion of the lectures as fully as possible.

Mr. *Shadwell* stated, that the act purported to alter in many respects some of the common forms of Conveyancing, and to introduce many serious alterations, and, he hoped, improve-

ments, into the law of real property. Most of the alterations had formed the subject of the deliberations of the late Real Property Commission, and were adverted to with more or less distinctness in its reports; and the act might therefore in some sort be considered as one of the legacies of that commission.

It was understood that the original sketch of the bill was drawn up by his late lamented friend Mr. Tyrrel, who was himself one of the commissioners, whose name must ever be honourably remembered as the author of the New Statute of Wills.

The bill came into parliament under the very highest auspices, having been brought into the House of Lords by the present Lord Chancellor, and introduced by him in a very able speech.

During the progress of the bill through the committee of the House of Lords, nearly one-half, as it stood when originally introduced, was struck out; it being thought that the subject matter of the clauses so struck out required further consideration, but at the same time an intimation was given that the clauses so struck out would be introduced in a separate bill on a future occasion. It would be seen, therefore, that the present was not to be considered a complete measure; and as some of the clauses so struck out had a considerable bearing on those that remain, it would be convenient to read the marginal summaries of the clauses of the present act as it stands, and then the marginal summaries of the clauses that have been struck out. The marginal summaries of the act are—

- 1st. Meaning of words defined.
- 2nd. Freehold land may be conveyed by deed without livery of seisin or prior bargain and sale.
- 3rd. Partitions, exchanges, and assignments to be by deed only.
- 4th. Leases and surrenders in writing to be by deed.
- 5th. Contingent interests may be conveyed by deed.
- 6th. No implied warranty to be created by "grant" or "exchange."
- 7th. No conveyance to operate by wrong, or to have greater effect than a release.
- 8th. Contingent remainders abolished. Executory devises or estates. Existing contingent remainders to continue.
- 9th. Executor or administrator of mortgagee empowered, on discharge of mortgage, to convey the legal estate vested in the heir or devisee.
- 10th. Receipts of trustees to be effectual discharges.
- 11th. Indenting a deed unnecessary.
- 12th. The remedies for the rent and covenants of a lease not to be extinguished by the merger of the immediate reversion.
- 13th. Act to commence from the 31st December, 1844.
- 14th. Act not to extend to Scotland.

There are fourteen clauses in the act as it stands, some of them of great importance and

making very considerable changes; but in the bill as it stood on its introduction there were twenty-eight clauses, and the changes were still more extensive and important.

The marginal summaries of the clauses struck out were as follows:—

1st. A bargain and sale and covenant to stand seized to pass the legal seizin.

2nd. Appointment to trustees to uses to take effect as if made to the uses at once.

3rd. Married women may assign reversionary interests in money.

4th. Deed not to be valid unless signed as well as sealed and attested.

5th. No appointment to be valid unless executed as before required, except as money payable to the separate use of a married woman.

6th. Appointments by deeds executed like other deeds shall be valid, although other solemnities are required.

7th. Any person may convey to himself or his wife.

8th. Tenants in common of personal property may declare themselves to be joint tenants.

9th. Disclaimer not valid unless by deed or matter of record.

10th. Married women may disclaim.

11th. A rent charge may be apportioned.

12th. Release of part of the land from a rent not to be a release of the whole.

13th. Conditions not to assign, &c. without license, not to be determined by one license.

These thirteen clauses, all of them of considerable importance, and many of them having an immediate bearing on the execution of deeds, and therefore within that peculiar practice of solicitors to which he wished as much as possible to confine his observations, though thrown out of the late act, must be looked upon as very likely to be soon again introduced into parliament, and some of them at least to become the law; while their rejection for the present casts a reflected light upon what had been made into law.

In commenting upon an act which had not yet come into operation, the lecturer could not of course avail himself of the ordinary resource of an annotator—the decided cases, but he hoped he had something more to rely on, in endeavouring to explain the meaning of its several clauses, than his own unaided reflections and conjectures.

When the Lord Chancellor introduced his bill into parliament, he caused copies of it to be distributed to several among the most eminent of the conveyancing counsel, with a request to have their sentiments on its various clauses. To many of these gentlemen the lecturer had already applied, and to others he intended to apply, for copies of their communications. From the well known liberality of his professional brethren, he had no doubt he should succeed in his application; indeed from some he had already received the papers he asked, and he therefore should be enabled to state the deliberate judgments of the men

whose business it would be, at least in the first instance, to put a practical construction upon the act.

It had been usual, in all the acts that had been passed of late for the reformation of the law relating to Real Property, and indeed a great many other heads of law, to begin by a definition of the sense in which the various words introduced into the act were to be used: that the "male" was to include the female; "land," all kinds of real property; "person," corporations as well as individuals, and so on; and a most useful practice it was, as tending to disencumber legislative enactments of that endless repetition and verbosity which was its peculiar bane.

The learned lecturer then read the defining clause of the act, and observed, that in considering its provisions it would be very necessary to bear these peculiar definitions in mind. He then proceeded to the 2nd section, which brought him to a subject with which the legislature had dealt a very short time previously to the present enactment,—the common form of conveyance of *Lease and Release*. Here Mr. *Shadwell* stated, very clearly and concisely, the origin of the law and practice relating to Conveyances by *Lease and Release*, and remarked, that the machinery which he described must be admitted to be very clumsy, and it might create some surprise that it had been endured so long. Ireland and our colonies, he said, had long ago shown us the way to alteration, which we had been very slow to follow.

By the Irish statute on this subject it was enacted, that the recital of a lease for a year contained in a conveyance should be held to be conclusive evidence of its existence; and under that statute, in Irish Conveyancing a lease for a year had altogether fallen into disuse. By several of the local legislatures of our colonies the lease for a year had long been abolished, as might be seen in *Stokes on Colonial Law*, and the late work on our colonies by Mr. *Burge*.

Our own first legislative interference with this form of conveyance was by the 4 Vict. c. 21, entitled "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same parties." This did away with the necessity for a lease for a year, but as it was only to be in the case of a release which should be expressed to be made in pursuance of that act, there was left behind the necessity of making a distinct reference to the act, which was to be regretted, both from the danger of omission of the reference by careless or unskilful practitioners, and from the reference itself being wholly unnecessary, and merely tending unnecessarily to lengthen the deed.

The second clause of the present act, which seemed to leave nothing to be desired, was as follows:—

"That every person may convey, by any deed, without livery of seisin or enrolment, or a prior lease, all such freehold land as he might before the passing of this act have conveyed by



lease and release; and every such conveyance shall take effect as if it had been made by lease and release: Provided always, that every such deed shall be chargeable with the same stamp duty as would have been chargeable if such conveyance had been made by lease or release.<sup>55</sup>

Under this clause, therefore, there need not be any reference to the act. The only doubt that had occurred to his mind on this section, was in connexion with the 13th clause, which enacts that this act shall commence from the 31st of December, 1844, and shall not extend to any deed executed, or to any estate created, before the 1st day of January, 1845. On these clauses it had occurred to him that there might be doubts whether estates *pour autre vie*, created by lease dated before the act, could be safely conveyed under its provisions; for how could it be said that such an estate *pour autre vie* was not an estate created before the 1st of January, 1845? It was difficult to think the legislature intended any distinction between this and other kinds of estates, but he did not see how they were to escape from the words.

By this total abolition of a lease for a year, a client gained something, but not much; all that he gained was the solicitor's charge for drawing and engrossing the lease, and that in a transaction of any magnitude could scarcely be worth notice. The lease for a year stamp was sedulously preserved in both acts.

It would be important, however, to remember that it was not necessary to affix this lease for a year stamp where the estate to be conveyed was *equitable* merely, and not legal. An estate sold subject to a mortgage in fee, or where the beneficial interest only was sold, the legal estate being outstanding in trustees,—in all these cases there needs only the *ad valorem* stamp on the conveyance, and the lease for a year stamp might be saved.

[We shall continue the report of this part of Mr. Shadwell's lectures in our next number.]

## FEEES OF ATTORNEYS IN IRELAND.

A NEW scale of fees, allowances, and charges was approved by the Judges of the Common Law Courts in Ireland, on the 25th November, under the authority of the 7 & 8 Vict. c. 107, s. 39. It includes the general rules which regulate the principles upon which taxation shall be conducted.

As these rules and scale of costs are an improvement on the former system, and may furnish an authority for improvements in England, we shall set them forth. They apply to the civil side of the Court of Queen's Bench, the Common Pleas, the Exchequer of Pleas, and the Exchequer Chamber:—

Michaelmas Term, 1844.

### RULE I.

It is ordered by the judges, that the fees, allowances, and charges, mentioned in the following table, shall be the established fees, allowances, and charges to be allowed to attorneys, on taxation of costs in common law business, in respect to all business done from and after the 11th day of October, 1844, subject to such alterations as the judges may from time to time direct; and that in such taxation regard shall be had to the several instructions and directions accompanying the said table.

#### Instructions. Letters.

	£	s.	d.
1 Instructions to proceed or defend	0	6	8
2 Letter for payment, or to settle, and copy, if sent		0	3 6
N.B. Not to be allowed, unless sent a reasonable time before action commenced.			
3 Other letter, when necessary, and copy		0	3 6
4 Each additional copy		0	1 0

#### Writs and Process.

5 Capias or subpoena ad respondendum		0	10	0
6 Letters misaive		0	10	0
7 Distringas, or other process, original or mesne, to enforce appearance		0	10	0
8 Replevin and recaption (for both)		0	10	0
9 Recordari		0	10	0
10 Pone		0	10	0
11 Attachment		0	10	0
12 Certiorari, or habeas corpus cum causa		0	10	0
13 Procedendo		0	10	0
14 Prohibition		0	10	0
15 Supersedeas		0	10	0
16 Writ of error		0	10	0
17 Venire facias juratores		0	5	0
18 Distringas, common or special jury, with copy of panel		0	6	0
19 Distringas, common or special jury, with clause of view		0	10	0
20 Habeas corpus ad testificandum		0	5	0
21 Subpoena ad testificandum		0	4	0
22 Subpoena duces tecum		0	5	0
23 Commission for witnesses		0	12	6
24 Capias ad satisfaciendum (including testatum)		0	12	6
25 Fieri facias (ditto)		0	12	6
26 Elegit (ditto)		0	12	6
27 Retorno habendo		0	10	0
28 Habere facias possessionem, single demise		0	10	0
29 Ditto, for every additional demise		0	1	0
30 Writ of possession, 1, 2 Will. IV. c. 31, s. 24, &c.		0	10	0
31 Writ of restitution		0	10	0
32 Levare facias, or other writ issued after final judgment not herein particularly specified		0	12	6
33 Writ of inquiry, fee		0	6	8
34 Engrossing ditto, per folio		0	0	6
35 Record of Nisi Prius, fee		0	13	4

	£	s.	d.
36 Engrossing ditto, per folio . . . . .	0	0	6
37 Writ of scire facias, fee . . . . .	0	10	0
38 Engrossing ditto, per folio . . . . .	0	0	6
39 Alias or testatum scire facias, fee . . . . .	0	3	4
40 Engrossing ditto, per folio . . . . .	0	0	6
N.B. The above fees to include all certificates at foot and endorsements, sealing, and all things requisite to complete the writ or process.			
41 Precipe for Chancery writ . . . . .	0	3	4
42 Appearance . . . . .	0	5	0
43 Appearance and defence in ejectment . . . . .	0	5	0
44 Term fee . . . . .	0	6	8

N.B. Not to commence for either party until appearance, and to end with final judgment. Not to be chargeable for plaintiff, unless an act in court be done in the term. In cases where several separate pleas or defences are put in by the same attorney, one term fee only to be allowed for all. One term fee to be allowed in ejectment, although no defence be taken.

*Drafts, Copies, &c.*

45 Drawing and engrossing any pleading, 3 folios or under . . . . .	0	4	6
46 Drawing declarations, and all pleadings, suggestions on record, bills of exceptions, special verdicts, &c. (to include instructions and copies for counsel, when employed,) per folio . . . . .	0	1	0
N.B. In cases of difficulty and importance, wherein the pleading is short, an additional compensation for instructions given to counsel may be allowed, but within the rule as to cases for advice of proofs, post, No. 160. Nothing in this schedule is to interfere with the general rule of the 8th of May, 1832.			
47 Engrossing ditto, per folio . . . . .	0	0	6
48 Drawing and engrossing affidavit, when 5 folios or under . . . . .	0	4	0
49 Drawing affidavit, per folio . . . . .	0	0	6
50 Engrossing ditto, per folio . . . . .	0	0	3
51 Drawing and engrossing petition, charge, or discharge, and copy, 5 folios or under . . . . .	0	6	8
52 Drawing petition, charge, or discharge, per folio . . . . .	0	0	6
53 Engrossing ditto, per folio . . . . .	0	0	3
54 Drawing and engrossing recognisance, or bail-piece . . . . .	0	6	8
55 Drawing assignment of judgments, 10 folios or under . . . . .	0	10	0
56 Engrossing ditto . . . . .	0	10	0
57 Drawing and engrossing memorial of ditto . . . . .	0	6	8
58 Drawing and engrossing warrant to enter satisfaction of judgment . . . . .	0	6	8
59 Drawing and engrossing submission or award, 5 folios or under . . . . .	0	10	0

	£	s.	d.
60 Ditto for each additional folio . . . . .	0	1	0
61 Drawing and engrossing consent or undertaking, 5 folios or under . . . . .	0	3	4
62 Ditto for each additional folio . . . . .	0	0	6
63 Drawing and engrossing receipt for money or other matter, in a cause . . . . .	0	2	6
64 Drawing deeds, or like instruments, not herein specially provided for, for each skin of 15 folios . . . . .	0	15	0
65 Engrossing ditto . . . . .	0	15	0
N.B. At the same rate for a greater or a less quantity.			
66 Filling common bond and warrant . . . . .	0	12	4
67 Drawing and engrossing any ordinary power of attorney . . . . .	0	12	4
68 Copy deeds for oyer, per folio . . . . .	0	0	6
69 Summons in ejectment . . . . .	0	5	0
70 Notice that ejectment is brought for non-payment of rent, or on elegit, or the like . . . . .	0	5	0
71 Each necessary copy of declaration in ejectment, summons, and notices, not exceeding 300 copies, as limited by statute 4 Geo. IV. c. 89 . . . . .	0	2	6
N.B. The attorney for the lessor of the plaintiff shall verify the necessity of the service claimed as to each respective individual, to the satisfaction of the officer.			
72 Drawing notice, particulars of demand or set-off . . . . .	0	4	0
N.B. The officer may allow for drawing long and special notices, where requisite, at a rate not exceeding 6d. per folio.			
73 Copy, ditto, 6 folios or under . . . . .	0	1	0
74 Ditto, for each additional folio . . . . .	0	0	2
75 Service of notice, rule, or order in Dublin on opposite attorney . . . . .	0	1	0
76 Certificate of description of defendant, &c. pursuant to statute 9 Geo. IV. c. 35, ss. 8, 9 . . . . .	0	2	6
77 Drawing report, including attendance on the master, &c. for instructions for his report, and drawing rough draft thereof and of schedules, for each folio, or concluding part of a folio, for so many as the signed report and schedules shall contain . . . . .	0	0	6
78 Engrossing report and schedules, for each folio . . . . .	0	0	8
79 Drawing and engrossing report upon order to tot . . . . .	0	6	8
80 Each copy of an ordinary writ, order, notice, consent, summons, or the like . . . . .	0	1	0
81 All copies of documents not herein otherwise provided for, for each folio . . . . .	0	0	2
N.B. Paper or parchment not to be charged for or allowed in any case,			

	£	s.	d.		£	s.	d.
being included in the allowances made in this schedule.				103 Attendance for postea, if not filed on the proper day . . . . .	0	3	4
<i>Attendances.</i>				104 Attendance to see cause set down for argument . . . . .	0	3	4
82 Attendance and fee on side bar rule, or to make order of Nisi Prius a rule of court . . . . .	0	3	4	105 Attendance on officer, with notice of motion . . . . .	0	3	4
83 Attendance on each motion in court, or in chamber, not requiring notice, including attendance on counsel . . . . .	0	6	8	106 Attendance for and filling first summons to go before officer or arbitrator . . . . .	0	3	4
84 Attendance, on common motions on notice, day of hearing . . . . .	0	6	8	107 Attendance on judge or baron for order and fiat, or letter missive . . . . .	0	6	8
85 Attendance on new trial motions, trials by the record, or law arguments, day of hearing . . . . .	0	13	4	108 Attendance and docket for judge or baron, with notice for new trial motion, or conditional order for setting aside verdict or nonsuit, together with the necessary documents . . . . .	0	3	4
86 Attendance, while case in the list and not called on, each day . . . . .	0	3	4	109 Attending noting books for the judges, indexing and endorsing the points of exception or objection, including instructions and attendance on counsel for the points, if necessary . . . . .	0	13	4
N.B. This fee not to be allowed for any day on which, by the practice of the court, the case is not to be called on.				110 Attendance before the master on special reference . . . . .	0	6	8
87 Attendance, to mark judgment . . . . .	0	3	4	111 Attendance to enrol memorial of assignment of judgment . . . . .	0	6	8
88 Attendance, to satisfy judgment, including signing the roll . . . . .	0	6	8	112 Attending to amend pleadings under order or by consent . . . . .	0	6	8
89 Attendance, on writ of inquiry or inquisition, in Dublin . . . . .	1	1	0	113 For all the attendances in the offices of the courts in cases where no term fee allowed . . . . .	0	6	8
90 Ditto, in the country . . . . .	2	2	0	114 Attending to draw money out of court . . . . .	0	13	4
N.B. These fees to include all attendances for delivery and return.				115 Attendance to strike special jury . . . . .	0	6	8
91 Ditto, on record of Nisi Prius, in Dublin, day of trial . . . . .	2	2	0	116 Attendance to reduce special jury . . . . .	0	6	8
92 Ditto, each succeeding day of trial . . . . .	2	2	0	117 List of 48 names . . . . .	0	2	0
93 Attendance on ditto, while cause in the list unheard, each day . . . . .	0	6	8	118 List of 24 names . . . . .	0	1	0
94 Assize fee, jury being sworn . . . . .	5	5	0	119 Attendance inquiring as to solvency of sureties proposed . . . . .	0	6	8
95 For each day of trial after the first . . . . .	2	2	0	120 Attendance, putting in or opposing special bail or sureties . . . . .	0	6	8
96 If record at the assizes entered and jury not sworn . . . . .	2	2	0	121 Attendance at the Stamp Office . . . . .	0	6	8
97 To be increased on circumstances, but not to exceed . . . . .	5	5	0	122 Attending to settle and pay debt and costs, (debt 20 <i>l.</i> or upwards) . . . . .	0	6	8
98 As between attorney and client, if the attorney employed at the trial be not a practitioner of the county, the client will be liable to pay him in lieu of the assizes fee, for each day necessarily occupied . . . . .	2	2	0	123 Ditto debt under 20 <i>l.</i> . . . . .	0	3	4
99 Also his actual travelling and other expenses, or in lieu of them, per diem . . . . .	1	1	0	N.B. In actions of assumpsit, debt, or covenant, for sums under 20 <i>l.</i> , or within the proviso of the rule of 8th May, 1832, the instructions and attendances shall be taxed at the scale of charges mentioned in this schedule, reduced by one-half, and if for sums under 5 <i>l.</i> no instruction or attendance shall be allowed. But this shall not extend to actions brought for the purpose of trying a right to property more extensive than the sum sued for.			
100 Attendance on the sheriff, or his returning officer, coroner, or elisor, with writ and for return, or for assignment of bail or replevin bond . . . . .	0	3	4	124 Attending and obtaining or giving undertaking to appear, including undertaking . . . . .	0	6	8
101 Attendance on the registrar, with docket of record, and copy of bill of particulars, (with certificate of counsel, where requisite) and to enter cause for trial . . . . .	0	6	8	125 Attendance to pay money into court . . . . .	0	13	4
102 Attendance and docket for registrar, of plea of confession or consent for judgment given, and that cause will not proceed to trial . . . . .	0	3	4	126 Attending on a view jury, in Dublin . . . . .	0	13	4

	£	s.	d.
127 Ditto, in the country, according to distance, not exceeding, exclusive of travelling expenses, per diem . . . . .	2	2	0
128 Attendance on arbitrators, for each hour when business done . . . . .	0	6	8
129 Not to exceed on any day . . . . .	2	0	0
130 Attending the parties on execution of deeds, warrants to acknowledge satisfaction, or to see assignments of judgments and memorials executed . . . . .	0	6	8
131 Also for each execution at a different time and place . . . . .	0	6	8
132 Attending to examine witnesses, in cases of difficulty and importance, not to exceed in any case . . . . .	2	0	0
133 Attending to inspect or exhibit documents . . . . .	0	6	8
134 Attending counsel with briefs, cases, pleadings when special, refreshers, retainers, to appoint consultations, this to include attendance on all the counsel, no matter how many . . . . .	0	6	8
135 Attending consultation (see rule of 8th May, 1832) . . . . .	0	13	4
136 Each necessary attendance not herein otherwise provided for, for the first hour . . . . .	0	6	8
137 If on a public board, for the first hour . . . . .	0	13	4
138 For each further hour on same day . . . . .	0	6	8
139 Not to exceed on same day . . . . .	1	0	0
140 Each necessary attendance on the client, or on any other person by his directions, for the first hour . . . . .	0	6	8
141. For each succeeding hour employed . . . . .	0	6	8
142 Not to exceed on same day . . . . .	1	0	0
143 On appointment of new attorney, for his necessary instructions to enable him to obtain a knowledge of the cause, in ordinary cases . . . . .	0	6	8
144 To be increased when the officer is of opinion the labour deserves it, but not to exceed . . . . .	2	0	0
N.B. This not to be allowed against the party, except in cases where the charge arises from absolute necessity, not from the voluntary act of the client.			
145 Drawing memorandum of judgment, &c. and copy for the register, under the 7 & 8 Vict. c. 90, s. 2, &c. . . . .	0	5	0
146 Attending the register . . . . .	0	3	4
147 Signing pleadings, affidavits, reports, or other documents, to be filed pursuant to any statute or rule of court . . . . .	0	2	6
N.B. The signing fee for writs and records is included in the allowances above made for those instruments.			

Searches.

	£	s.	d.
148 Search in the office for appearance, declaration, or the like . . . . .	0	3	4
N.B. These searches to be allowed when the time limited for performing the act has expired.			
149 Search if ejectment moved on, unless ejectment be moved on upon the first day of term . . . . .	0	3	4
N.B. Where several separate defences are taken in ejectment by the same attorney, one search only to be allowed.			
150 Search for judgment, on reviving, satisfying, or assigning, (to include instructions) . . . . .	0	6	8
151 Docket and copy for requisition for search to be made by the register of deeds . . . . .	0	5	4
152 Attending register of deeds for office search, whether common or negative . . . . .	0	13	4
153 Search on adversary's title in registry of deeds by attorney, previous to bringing ejectment, for each hour he is actually and necessarily employed in making the search . . . . .	0	6	8

Briefs.\*

154 Draft brief for trial, comprising statement of the case, testimony of the witnesses, and necessary observations, for each brief sheet containing 6 folios . . . . .	0	3	4
155 Copies of ditto; also copies of the necessary pleadings and documentary evidence, for each sheet containing 6 folios . . . . .	0	2	0
156 Draft observations and copy for counsel on motion, law argument, or the like . . . . .	0	5	4
157 Copies to accompany ditto, of affidavits, pleadings, and other necessary documents (when they exceed 6 folios), each sheet containing 6 folios . . . . .	0	2	0
158 Docket of retainer, refresher, or the like, for the first counsel . . . . .	0	3	4
159 For each of the other counsel . . . . .	0	1	0
160 Copy statement of case for counsel to advise proofs (see rule of 8th May, 1832) for each sheet of 6 folios . . . . .	0	2	0

N.B. The draft of such case allowed where brief for trial not afterwards made. Copies of pleadings and documents sent with case for proofs must be afterwards incorporated with briefs for trial

\* These allowances are much less than in England.

## Taxation of Costs.

	£	s.	d.
161 Draft costs between party and party, per page, to contain on the average 20 items . . . . .	0	1	0
162 Copy . . . . .	0	0	6
N. B. In costs between attorney and client no draft allowed; nor copy, save that if the attorney had furnished his bill to his client for payment, and he is afterwards obliged to furnish his bill, pursuant to the statute, or if he be obliged or requested to furnish extra copies to his client, or to third parties (as receivers in chancery, &c.) or for taxation, then the extra copies are to be allowed for at the above rate.			
163 Attendance to tax costs, not requiring summons . . . . .	0	3	4
164 Ditto, on summons, debt under 20l. . . . .	0	3	4
165 Ditto, on summons, debt or demand 20l. or upwards, or in ejectment, replevin, case, or trespass, &c. . . . .	0	6	8
166 For each successive hour . . . . .	0	6	8
167 Examining a bill of costs by the attorney opposing it on taxation, for each 200 items, or less . . . . .	0	3	4
168 On enrolling judgment, or other matter of record prepared by the officer, for the first roll . . . . .	0	5	0
169 For each succeeding roll . . . . .	0	2	6
170 Half roll, 1 & 2 G. 4. c. 53. s. 30 . . . . .	0	1	3
171 Transcript for the court of error, fee . . . . .	1	0	0
172 Engrossing ditto, per folio . . . . .	0	0	6

## RULE II.

The above table being intended as fixing merely the amount of fee or charge in each item, whether between party and party, or attorney and client, is not, from the introduction of such items, to be construed as thereby authorising any charge, or entitling the attorney to any fee, as between party and party heretofore only allowed, or which ought only to be properly charged between attorney and client, or the contrary; but in so far as the officer in the taxation of costs may have, or may think fit to exercise, under the control of the court, a discretion on the subject of particular charges, it is considered by the judges to be desirable, that the fees and charges, between party and party, should assimilate as nearly as may reasonably and justly be attainable, to those between attorney and client.

## RULE III.

The taxing officers are authorized, from time to time, to issue general directions respecting the mode of preparing affidavits to be used before the taxing officers for the purpose of

regulating the taxation, and likewise the mode of preparing bills of costs, and the use to be made of printed forms of bills of costs in common cases, and the charges to be made for costs to which such forms are applicable.

## RULE IV.

The judge at Nisi Prius may, if he shall think fit, certify on the back of the record at the trial, that, in his opinion, any particular witness or witnesses produced at either side was or were unnecessary; and, in the taxation of costs, the expenses of the said witness or witnesses shall not be allowed against the opposite party.

(Signed) EDWARD PENNEFATHER.

JOHN DOHERTY,  
MAZIERE BRADY,  
CHARLES BURTON,  
RICHARD PENNEFATHER,  
ROBERT TORRENS,  
P. C. CRAMPTON,  
L. PERRIN,  
JOHN RICHARDS,  
N. BALL,  
THOS. LEFROY,  
J. D. JACKSON.

## ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—As the plan of the penny postage is proposed to be applied to all receipts, I beg to throw out the suggestion to your numerous readers, whether, if the government should decline on the score of deficiency of revenue, to repeal the attorneys' certificate duty, a similar plan might not be adopted to compensate for the loss.

That which occurs to me at the present moment is, a penny stamp on every writ and indenture skin, to be borne by the solicitor by whom the same is issued and engrossed. Would not some such arrangement as this throw the burden of the duty upon each, in proportion to his business, and not, as at present, upon the young beginner, equally with the old practitioner,—upon those who, though they do not earn the amount, are obliged to take out their certificates to avoid the necessity of readmission,—to keep up their standing in society, to act professionally for their medical attendants, or to perform acts of kindness for their families and friends?

A YOUNG PRACTITIONER.

**CANDIDATES WHO PASSED THE EXAMINATION.**

**MICHAELMAS TERM, 1844.**

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Abrahams, Samuel, the younger . . . . .	Samuel Abrahams, 4, Lincoln's Inn Fields
Aldridge, Walter William . . . . .	Joseph Warner Bromley, 1, South Square, Gray's Inn
Allen, William . . . . .	John Garrard, High Street, Onley
Amphlett, Thomas . . . . .	Roger Williams Gem, the younger, Birmingham
Armstrong, George . . . . .	Charles Thompson, Workington
Ashmore, Charles Cliff . . . . .	Robert Few, 2, Henrietta Street
Barnard, John, the younger . . . . .	John William Allen, Carlisle Street, Soho Sqr. Charles Pettitt Allen, Carlisle Street
Barnett, Richard Humphreys . . . . .	Charles James Palmer, 24, Bedford Row
Baynes, George . . . . .	Daniel Smart, Emsworth, Co. Southampton
Bearcroft, Harry . . . . .	John Bury, Bewdley
Bignold, Edward Samuel . . . . .	Thomas Bignold, Norwich
Bird, Wm. Robinson . . . . .	Thomas James, Crampton John Lee Bell, Brampton
Bray, Philip . . . . .	Henry Bray, Droitwich
Brockbank, James . . . . .	Wilson Perry, Whitehaven
Brown, Henry Hill . . . . .	Isaac Wrentmore, 19, Lincoln's Inn Fields
Burbary, James Pashley . . . . .	Benjamin Burbary, Sheffield Charles Few, Henrietta St., Covent Garden Benjamin Burbary
Burrell, William Fitchett . . . . .	David William Weddell, Gosport
Bush, Henry Edgell . . . . .	Elijah Bush, Trowbridge
Button, James, the younger . . . . .	Samuel David Young, late of Woolpit, Co. Suffolk, now of Bury St. Edmunds William Parr Isaacson, New Market, St. Mary
Capron, Frederick Lucas . . . . .	Charles Markham, Northampton William Hughes Brabant, Savile Place
Clarke, Charles Harwood, B. A. . . . .	Robert Bayley Follett, Bedford Row John Swarbreck Gregory, Bedford Row
Clarke, William, the younger . . . . .	William Clarke, the elder, Thetford
Cleave, John Jones . . . . .	John Cleave, Hereford
Cox, Spencer Murch . . . . .	John Melhuish, Honiton, Co. Devon
Crane, John William Howard . . . . .	George Poulson Wragg, Birmingham
Dabbs, John . . . . .	Halford Adcock, Leicester Richard Stephens Taylor, Gray's Inn
Davies, Thomas . . . . .	William Pugh, Hay
Derry, George Whitfield . . . . .	Herbert Menda Gibson, Plymouth
Dewy, Robert Cullen . . . . .	James Russell, Ramsbury, Co. Wilts John Frederick Isaacson, 40, Norfolk Street, Strand
Dix, Thomas . . . . .	John Ford Hyatt, Newcastle-under-Lyme
Dixon, William . . . . .	Samuel Benjamin Merriman, 25, Austin Friars
Downard, George . . . . .	Jonathan Scarth, Shrewsbury
Drinkall, Robert, the younger . . . . .	William Drusley, Howden, Co. York Joseph Blanshard, Burland-of Howden, and South Cave
Dunnett, Daniel, the younger . . . . .	Charles Hennell, Bury St. Edmunds John Greene, Bury St. Edmunds
Edmett, Thomas . . . . .	George Furley, Canterbury
Edwards, James . . . . .	Charles Edwards, Totnes
Elliott, William Timbrell . . . . .	George Frederick Abraham, 6, Gt. Marlborough Street
Estcourt, Charles Wyatt . . . . .	Henry Sewell, Newport
Everill, Thomas George . . . . .	George Price Hill, Birmingham
Fell, William Cotton . . . . .	Edward Fisher, Ashby-de-la-Zouch
Fisher, James . . . . .	Edward Stewart, Norwich
Fox, Charles Wright . . . . .	Thomas Hippisley Jackson, Stamford
Franklin, George Fairfax . . . . .	Frederick Fairfax Franklin, Attleburgh

Freeman, Daniel Alexander . . . . .	Thomas Freeman, Brighton John Tilleard, 34, Old Jewry
Gates, William Brooks . . . . .	Charles Britten, Northampton
Gooding, Edward Bryant . . . . .	James Randolph, Milverton
Goodrich, Arthur . . . . .	John Aubrey Whitcombe, Gloucester
Grattan, Enoch Grafton . . . . .	John Peter Fearon, Inner Temple
Gribble, Henry . . . . .	John Rogers Wheeler, Wokingham
Haines, George James . . . . .	William Gribble, Barnstable
Hammond, Henry . . . . .	James Haines, Farringdon
Harrison, Eldred . . . . .	Sayers Turner, Colchester
Harrison, John Seppings . . . . .	Charles Duce, the younger, 10, Billiter Sq.
Harvey, Richard . . . . .	Lawrence Harrison, Penrith
	Alexander Poulken, Portsea
	Edward Elwin, Dover
	William Bertram Bishop, 2 Verulam Build- ings, Gray's Inn
Heath, Allan Borman . . . . .	Joseph N. Mourilyan, Verulam Buildings
	Henry Earle, Andover
Herring, George Anthony . . . . .	Walter Hughes, 17, Bucklersbury
Hicks, Richard . . . . .	Thomas Walker, York
Hillerdson, Frederick Edward . . . . .	John Coverdale, 4, Bedford Row
	William Thomas Longbourne, 4, South Square, Gray's Inn
Hilliard, William Edward . . . . .	Nash Crosier Hilliard, 2, Raymond Buildings, Gray's Inn
	Edward Amos Chaplin, 3, Gray's Inn Square

[The remainder of this list will be given in our next number.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

PRACTICE. — PRODUCTION OF DOCUMENTS.  
—PRIVILEGED COMMUNICATIONS.

*The master of a ship (which had foundered) was sent to India by the owner and his solicitor, to collect evidence there in support of an action brought by the owner, on a policy of insurance against the underwriter, who afterwards filed a bill of discovery in aid of his defence,—*

*Held, that the letters sent home by the master so employed, to the owner and solicitor, were privileged communications, falling within the established rule.*

IN 1836, Mr. James Stewart brought an action against Mr. James Steele, to recover the amount of an insurance effected on the ship "Sherbourne," which belonged to Stewart, and was lost or foundered in the East Indies, in the year 1835. The plaintiff, under an order of court, examined witnesses abroad, and obtained a verdict in the action. The court afterwards granted a new trial; whereupon the defendant filed his bill in this court, for discovery in aid of his defence to the action, and for an injunction to stay the trial thereof. Stewart, in his answers to the bill—he put in several further answers—stated in substance, among other things, that Warren, the master of the ship, was, in consequence of his know-

ledge of India, sent out at the defendant's expense, by the advice and suggestion of his solicitor in the action, to collect evidence in support of the action, and that during the two years he was so employed he transmitted several letters to the defendant, and also to his solicitor, all which were in the defendant's possession or power, but he submitted that they were confidential communications, and that he was not bound to produce them to the plaintiff (in equity). A motion was made on the part of the plaintiff for the production of these letters; which motion the Vice-Chancellor (of England) refused.

The motion was now renewed before the Lord Chancellor.

Mr. Bethell and Mr. Heitherington, in support of the motion.—These letters are not entitled to privilege, which is confined to confidential communications between a client and his counsel, solicitor, or attorney, in reference to a pending suit; and the privilege is the client's, not the solicitor's; *Wilson v. Rastall*.<sup>a</sup> It is said in the argument in that case that in *Madame Du Barre's* case the privilege was extended to an interpreter: that was by reason of the necessity of the thing. The Vice-Chancellor admitted that the protection given by his Honour's decision in this case is a further extension of the privilege. But it has been heretofore the rule, that even a solicitor is bound to disclose facts obtained—not confidentially from his client, but from collateral quarters, although communicated to him in consequence of being the solicitor in the case; *Spencely v. Schulenburg*.<sup>b</sup> That decision is referred to

<sup>a</sup> 4 T. Rep. 753.

<sup>b</sup> 7 East. 357.

with approbation in *Sawyer v. Birchmore*<sup>c</sup> by the Master of the Rolls, (now Lord Cottenham,) who there says, that letters communicated to a solicitor "from collateral quarters were not protected," and "that he was bound to answer questions seeking information as to matters of fact, as distinguished from matters of confidential communication." These observations are quite germane to this case, and the same eminent judge's observations in *Desborough v. Rawlins*<sup>d</sup> are still more applicable, although that case is not quite similar in its facts. The Vice-Chancellor referred to *Hughes v. Biddulph*.<sup>e</sup> We are content to take the exposition of the rule from the judgment in that case. The protection was never given to any person unless he was in the position of a person giving professional advice; a third person, who overhears the conversation, or is made privy to it, may give it in evidence, and is not entitled to protection. The letters for which protection is claimed in this case came from an agent of the solicitor. Lord Hardwicke states distinctly in *Vaillant v. Dodemead*<sup>f</sup> that "an agent is not privileged from being examined, unless he is counsel, solicitor, or attorney;" and the present Master of the Rolls, in *Greenlaw v. King*,<sup>g</sup> says, "the cases of privilege are confined to solicitors and their clients; and stewards, and persons in the most closely-confidential relation, are bound to disclose communications made to them." Are this agent's letters to be privileged, when he himself is not entitled to protection from examination? They cited also *Storey v. Lord George Lennox*,<sup>h</sup> *Bunbury v. Bunbury*,<sup>i</sup> and *Combe v. the Corporation of London*.<sup>k</sup>

Mr. Romilly and Mr. Lewis opposed the motion.—It is true, as stated in *Wilson v. Rastall*, protection against disclosure is the privilege of the client, and not of the solicitor; still the solicitor is the person to be privileged, and not the client. But how can the solicitor be privileged, if his agent or clerk is compelled to disclose? The solicitor being unable himself to do all the business of all his clients, must employ agents; and so in this case the solicitor employed Mr. Warren to collect evidence in India. The broad rule is this, that protection is to be extended to the communications, not only of the solicitor himself, but of all whom he makes his agents, as standing in his shoes in relation to the cause of his client. In *Campbell v. French*,<sup>l</sup> and *Preston v. Carr*,<sup>m</sup> the privilege was held to extend to the clerk. Then if the clerk, and the interpreter, as in *Madame Du Barre's* case, are privileged, why not the agent of the attorney? Lord Kenyon says, emphatically, interrupting the argument in *Wilson v. Rastall*,—"In *Madame Du Barre's* case I considered the interpreter as standing

in the same situation as the attorney himself, and I said at the trial that he was the organ of the attorney." So is Mr. Warren the organ of the solicitor in the present case. The answer stated that he was sent out by the advice and at the suggestion of the defendant's solicitor, for the purpose of collecting evidence for the action. The communications made by him to the solicitor are as confidential as if made to him by his clerk, and they ought not to be produced. If the solicitor is privileged, all persons employed by him in his client's cause must be privileged. Some of the letters are written to the defendant, and are as much entitled to protection as if they were written to him by the solicitor. The rule must be based on the principle that communications by those whom the solicitor employs, are equally entitled to protection as the solicitor's own communications to his client. In *Desborough v. Rawlins* and *Sawyer v. Birchmore*, the communications were not made to the solicitors as solicitors of the parties, and therefore they were not privileged. They cited, in support of their argument, *Walker v. Wildman*,<sup>n</sup> *Curling v. Perring*,<sup>o</sup> *Bunbury v. Bunbury*,<sup>p</sup> *Llewellyn v. Badeley*,<sup>q</sup> and *Herring v. Clobury*.<sup>r</sup>

Mr. Bethell, in reply, after observing that several of the cases cited on the other side supported his motion, said, if the privilege had been ever extended to communications like the letters in question, some case of the sort must have occurred at *nisi prius*, but no such case had been produced, and therefore it was fair to assume that the privilege contended for was never recognised.

The Lord Chancellor said, the question was of great importance, and he should take time to consider it.

The Lord Chancellor.—In this case an action had been commenced in the Court of Common Pleas, by the defendant here, against the plaintiff, to recovery on a policy of insurance of the ship "Sherbourne," at and from Calcutta, for a period of twelve months. The defence to this action was, that the ship had not been seaworthy at the time the insurance was effected. A bill was filed for a discovery, and for an injunction to stay the action; and the plaintiff, in the bill, moved for the production of papers admitted by the answer of the defendant, and set forth in a schedule to that answer, as being within his possession and power. The question at issue between the parties to the motion was, whether these papers, so admitted to be within the possession and power of the defendant or his solicitor, did not come within the description of privileged communications, which he was not bound to produce for the inspection of the plaintiff. The answer stated that Thomas J. Warren, the master of the ship, had been sent out to India to collect evidence in support of the action on the policy,

<sup>c</sup> 3 Myl. & K. 577.

<sup>d</sup> 3 Myl. & C. 520.

<sup>e</sup> 4 Russ. 190.

<sup>f</sup> 1 Beav. 145.

<sup>g</sup> 2 Beav. 173.

<sup>h</sup> 2 Cox, 286.

<sup>i</sup> 2 Atk. 524.

<sup>j</sup> 1 Myl. & C. 525.

<sup>k</sup> 1 Y. & Coll. N.C. 631.

<sup>l</sup> 1 You. & J. 175.

<sup>m</sup> 4 T. Rep. 756.

<sup>n</sup> 6 Madd. 47.

<sup>o</sup> 2 Myl. & K. 380.

<sup>p</sup> 2 Beav. 173.

<sup>q</sup> 1 Hare, 527.

<sup>r</sup> 1 Phillips, 91; and 23 Leg. Ob. 362.



and that he had been engaged in that service for nearly two years, in consequence of it being necessary to examine a great number of natives and others who had been engaged in the matters referred to. The answer also admitted that Warren had been authorised by the defendant's solicitor to pursue these inquiries, and that he had been maintained in India at the expense of the defendant. In a subsequent answer, it was admitted that Warren had sent home divers letters and communications; that these letters had been duly received by the defendant, or by his solicitor, and were now in their possession; but defendant submitted, that being in the nature of confidential communications, he was not bound to produce them, or to answer whether they did or did not refer to the matters, the subject of the inquiry. In a further answer, it was admitted that these letters were written while Warren was residing in Calcutta, as the agent of the defendant, and that the letters referred to the matter at issue.

It does not appear to me that there is any inconsistency in these different statements. Warren might have been sent out as an agent by the advice of the defendant's solicitor, and acted also as his agent for the collection of evidence. The single question to be determined is, whether the communications so received are to be treated as privileged. First, then, as to the letters written by Warren as the agent of the solicitor to the defendant: When a solicitor is employed to collect evidence for a client in the pending suit, it is quite clear that all communications between them respecting the collecting of such evidence are privileged. But a solicitor could not always act in his own person; distance and various other circumstances might occasionally render it impossible. Such was the case in the present instance. Many of the persons whose evidence was required were resident in India and other places abroad. It was necessary, therefore, that the solicitor should employ an agent, and whether that agent so employed was his own clerk, or any other person, appears to me wholly immaterial. In the performance of the duties thus required from the agent employed by the solicitor, the communications made to the client on the subject of the evidence to be collected were communications made to the solicitor himself, falling within the same principle, and entitled to the same protection. As to the letters addressed to the solicitor himself by his agent, they would also be privileged, being written in pursuance of inquiries instituted by and under the direction of the solicitor, on the subject of the evidence required for the support of the action at law. I therefore agree with the Vice-Chancellor in thinking that these documents ought not to be produced. I cannot, however, concur with him in opinion, that there was any extension of the general principle in thus refusing to make the order; on the contrary, I think that it came within the same principle as that which governs the court in declaring that the communications between solicitor and client are to be considered as privileged.

The motion was refused, with costs.  
*Steele v. Stewart*, 15th of December, 1843, and 14th of November, 1844.<sup>1</sup>

### Rolls Court.

[Reported by E. VANSITTART NEALE, Esq.  
 Barrister at Law.]

DEMURRER. — OFFER TO DO EQUITY. — PARTIES.

*On a bill to have a policy of insurance delivered up on the ground of fraud: Semble, it is not necessary to offer to repay what has been paid by way of premium.*

*A prayer to be relieved in such manner as the court shall direct, held to imply such an offer.*

*The bill was filed by three directors of the insurance company, who had signed the policy, on behalf of all other parties interested therein, except the defendants. Held, that it was not necessary to make the directors, as a board, parties.*

THIS was a demurrer for want of equity, and of parties. The bill was filed by three of the directors of the Alfred Insurance Company, who had signed a certain policy of insurance in the name of all persons interested in the policy except the defendants; and it sought to have the policy, which it alleged to have been obtained by fraudulent representations, delivered up. It was admitted that the allegations of fraud were sufficient to sustain the relief asked, but it was alleged that the bill was defective in not offering to repay the sum which had been paid as premium. A party, it was said, circumstanced as the plaintiffs, might rest on his defence of fraud at law. If he succeeded there, he might retain the money paid. But when he came into equity for relief, he must offer to do equity: true, upon a bill for an account, the court would direct the account, though the bill contained no offer on the part of the plaintiff to pay the balance, should it be found against him; but even that jurisdiction was assumed with hesitation, and after much doubt on the part of Lord Eldon: and here there was the important distinction, that the plaintiff treated the whole contract as void *ab initio*. How could the court order the repayment of money under a contract, which, if it granted the plaintiff's prayer, it must declare to be void. The objection, it was urged, became stronger, when coupled with the second objection, viz., that the directors, by whom as a board the company was alleged to be governed, were not there as such; but only three of them in their individual capacities, as the persons who had signed the policy. For if the court were to

<sup>1</sup> See also the cases of *Bolton v. the Corporation of Liverpool*, 3 Leg. Obs. 309; *Greenough v. Gaskell*, 5 Leg. Obs. 302; and the article on the "Law of Attorneys," 8 Leg. Obs. 263, *et seq.*, where other cases pertinent to this point are mentioned.

order repayment of the premiums, that would be giving relief as against the company; while there was nobody on the record to represent the company. Again, what was to hinder the directors from filing a new bill if the present one was discharged, and wholly disregarding these present plaintiffs who did not themselves allege that they had any right to sue, except under the authority of the board? It was not stated on the bill that the directors were too numerous, to allow of their being all made parties.

Mr. Wood for the demurrer.

He cited on the first point, *Bromley v. Hol-land*, G. Coop. 9; *Mason v. Gardiner*, 4 Bro. C. C. 435, and *Whitmore v. Francis*, 8 Price, 616; and on the second, *Attwood v. Small*, 4 Jur. 239; 9th Law Journal, N. S. 152.

Mr. Kindersley and Mr. Hetherington for the bill.

Lord Langdale, after stating the facts of the case, observed, that even if the argument which had been urged as to the necessity of an offer to repay what had been paid as premium, in order to give the court jurisdiction to order it to be repaid, were well founded as a general principle, he should not consider it applicable in the present case; because the prayer of the bill was to be relieved from the policy in such manner as the court should direct; and he should therefore consider that the plaintiffs had submitted to the jurisdiction of the court, if such submission on their part were necessary. But then it was said, the company could not be compelled to make the payment, because there was no person here to represent it, and yet upon them the burden ought to fall. The objection was not a valid one, for there was no necessity for any direction as to the company. The plaintiffs came here to seek relief, and equity would not give them that relief, except on the terms of their doing equity by paying the premiums. Then it was said, a new bill might be filed. Now, certainly when the court permits some to sue on behalf of others, that difficulty did arise, and the security afforded by the strict rule of the court was to some extent diminished. The objection applied to the whole system of suits, where some sue on behalf of the rest. He thought, however, if the difficulty should ever arise, the court will be able to deal with it; and that in such a case as this, where some parties are put forward to represent others, if the directors of the company should come forward with another bill, that bill would not be allowed to remain on the file. This, however, was only his opinion—there was no authority on the point.

The demurrer must be overruled.

*Barker v. Walters.* Nov. 20, 1844.

Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Bar-  
rister at Law.]

EQUITABLE MORTGAGE.—PLEADING.—  
COSTS.

A. filed his bill against B. and several other

defendants, for the delivery up of the title deeds of an estate, upon which such other defendants claimed an equitable mortgage, on the ground that B., who was the solicitor of A.'s testator, had fraudulently delivered the deeds to the parties claiming the equitable mortgage. B. having put in an answer denying the alleged fraud, the plaintiff allowed the bill to be dismissed against him for want of prosecution; but the frame of the bill remained unaltered.

Held, that as the gist of the case was fraud on the part of B., the bill could not be sustained against the other defendants.

Held also, that the defendants might read the evidence gone into by them to disprove the alleged fraud, in order to entitle them to the costs of it, although the bill was dismissed without going into the case.

THE plaintiff in this case was the surviving devisee of his father, George Frankum, who was possessed of a freehold messuage, mill, and other hereditament, situate at Woolhampton, and also of certain pieces and closes of land, upon which the bill stated the defendants, Edward Brice Bunny and Samuel Slocock, who are bankers at Woolhampton, claimed a lien for 610*l.* and interest. The bill also stated that the messuage, mill, and other hereditaments, were mortgaged by the testator to Joseph Collins, for securing the payment of 600*l.* and interest, and that in 1829, the testator paid off this mortgage out of his own monies, whereupon the deeds relating to that property were taken possession of by Jeremiah Bunny, who acted as the testator's solicitor, in whose possession they remained until the testator's death; that Jeremiah Bunny was also the solicitor of the defendants, Edward Bryce Bunny and Samuel Slocock, and that these defendants well knowing that the land whereon they claimed their lien was an insufficient security for the amount of such lien, and finding that there was no personal estate of the testator to make up the deficiency, consulted with their solicitor thereon; and that the defendant Jeremiah Bunney, be-  
thought himself of the title-deeds relating to the mill and other hereditaments, and colluding with the other defendants, and in fraud of the plaintiff, proposed, and it was agreed between him and the other defendants, that the defendants, Edward B. Bunney and Samuel Slocock should set up a lien by way of deposit upon the title deeds of the mill and other hereditaments, as an additional security for the amount of their lien, and that in order to carry this fraudulent scheme into effect, the defendant Jeremiah Bunny delivered to them the deeds relating to the mill and other hereditaments. The bill also contained various charges in support of the alleged case of fraud, and prayed that the delivery of such title deeds by the defendant Jeremiah Bunny to the other defendants might be declared fraudulent and void, and that such other defendants might be ordered to deliver up the same deeds to the plaintiff.

The Vice-Chancellor having intimated an opinion that, as the case now sought to be established was different to that which appeared on the bill, the suit must be dismissed.

*Wakefield* and *Randall*, who were for the defendants, contended that the substance of the case was, that the defendants *Bunny* and *Sloccock* had the title-deeds in their possession, and that the plaintiff required those deeds to be delivered up. The only object of the allegations of fraud was to charge the costs of the suit against *Jeremiah Bunny*, and as those allegations had not been proved, so much of the bill as related to them might be dismissed with costs as against the other defendants; but still sufficient would remain for the court to make a decree, for the bill distinctly charged, that the defendants *Edward B. Bunny* and *Samuel Sloccock*, pretended that when the testator paid off the mortgage to *Collins*, he delivered the deeds relating to the mill and other premises to them, and denied such pretence to be true, and prayed that the deeds might be delivered up to the plaintiff.

*Bethell* and *Piggott*, for the defendants, were not called on to address the court.

The Vice-Chancellor said, it was of extreme importance that it should be understood, that parties should not only state the case they intended to rely on, but that they should prove what they rely on. Nothing was more plain than that the relief put upon this case was upon a case of fraud. His Honour then read the charges of the bill, and added, it was then asked by the prayer of the bill, that the delivery of the deeds to Messrs. *Bunny* and *Sloccock* might be declared fraudulent and void, so that the plaintiff commenced with a case of fraud, and stated no other case by which the deeds came into the possession of Messrs. *Bunny* and *Sloccock*, except that of fraud. Then, the allegations of fraud on which the plaintiff's claim to equitable relief was founded having been given up, and the case being now put upon circumstances of an innocent holding of the deeds, which was not the case put in issue by the bill, the suit could not be sustained, and the bill must be dismissed with costs.

*Wakefield* objected to the defendants being allowed the costs of evidence gone into by them to contradict the case of fraud, as no evidence had been read, but—

The Vice-Chancellor said, the case of fraud still remained on the pleadings, and therefore it was necessary to support the answer which denied the fraud; and that evidence might now be read.

*Piggott* accordingly read the evidence.

*Frankum v. Bunny*. Nov. 19, 1844.

Vice-Chancellor Wigram.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

PRACTICE.—24th ORDER OF AUGUST, 1841.

Upon a motion for leave to enter a memorandum under the 24th order of August, 1841, it is sufficient if counsel state or certify that

no account, &c., or other direct relief, is sought against the defendant, without producing an affidavit to that effect.

Mr. W. T. S. Daniel moved for leave to enter a memorandum of service under the 24th order of August, 1841. One of the defendants had been served with a copy of the bill under the 23rd order. It was admitted that the affidavit upon which the motion was founded did not state that no account, payment, conveyance, or other direct relief, was sought against the defendant. He submitted that such statement was not necessary, and that upon the authority of *Mawhood v. Labouchere*, 12 Sim. 362, and *Davis v. Prout*, 5 Beav. 102, it was sufficient that counsel, in moving for leave, stated the fact, it being presumed that the court had cognizance of its own records.

Sir James Wigram, V. C. If you certify to me that the fact is so, it can only be from the knowledge which you, as counsel, have of the draft, and the knowledge which the solicitor has, that the bill is itself in conformity with the draft. However, you may take the order.

*Hudson v. Dungworth*, M. T. 1844.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMMERTON, Esq., Barrister at Law.]

HABEAS CORPUS.—WARRANT OF COMMITMENT UNDER 6 & 7 VICT. C. 75.

*When a Frenchman was brought up on habeas corpus, under 6 & 7 Vict. c. 75, for fraudulent bankruptcy committed in France, the warrant of commitment directed the gaoler to keep him in custody until he shall be discharged by due course of law: Held, that the warrant of commitment was insufficient, and that where a magistrate commits a person in pursuance of a special authority given him by act of parliament, the terms of the commitment must be special, and pursue strictly the authority given by the act.*

*The application for a habeas corpus is an application at common law. The statute 31 Car. 2, and 56 Geo. 3, only provide means to facilitate the application.*

JACQUES BESSET, a Frenchman, was in September last committed to Giltspur Street prison by the Lord Mayor of London, charged under the 6 & 7 Vict. c. 75, with committing fraudulent bankruptcy in France. The first section of the statute recites a convention entered into between the Queen of England and the King of the French, for mutually giving up persons charged with certain offences committed in either country. When a person takes refuge in England, who has committed an offence in France, the statute directs that there shall be a requisition made by the King of the French, upon which one of her Majesty's principal Secretaries of State, by warrant under his seal, to signify that such requisition has been made, and shall require all magistrates and officers of

the peace to aid in apprehending the offender. The warrant of commitment was as follows:—

"To all and every the constables and other officers of the peace for the City of London and the liberties thereof, whom these may concern, and to the keeper of the Giltspur Street prison in London.

"*London, to wit.*—These are in her Majesty's name to command you and every of you forthwith, safely to convey and deliver into the custody of the said keeper, the body of Jacques Besset, being charged before me, one of her Majesty's justices of the peace in and for the said city and liberties, by the oaths of Philip Antoine Mathieu and others, taken and sworn in the presence of the said Jacques Besset, for that the said Jacques Besset is accused of having committed in France the crime of fraudulent bankruptcy, (as appears by the warrant of arrest issued by a competent judge in France, and duly authenticated before me; and as also appears by the warrant of one of her Majesty's principal Secretaries of State, requiring me to take cognizance of such crime;) the said crime and the acts done being clearly set forth and proved before me, by the oath of Philip Antoine Mathieu and others, whom you, the said keeper, are required to receive and him keep in your custody safely, *until he shall be discharged by due course of law*; and for so doing, this shall be to you and each of you a sufficient warrant under my hand and seal, this 23rd day of September, 1844.

(Signed) "WM. MAGNAY, Mayor." (L.S.)

The prisoner being brought up on habeas corpus, a motion was made by Mr. M. Chambers to discharge him out of custody.

Mr. James showed cause.

The prisoner is not in a situation to entitle him to the benefit of a writ of habeas corpus. He is a native of France, and is charged with a crime committed in France. [Lord Denman, C. J. The statute directs "that the prisoner shall be committed to gaol until delivered, pursuant to such requisition made by the King of the French, to deliver up to justice," &c. Now, this warrant orders the prisoner to be kept in prison "until he shall be discharged by due course of law."] The directions of the statute have been observed, the different steps required have been pursued, a requisition has been made, a warrant issued by the Secretary of State and the magistrate has been properly put in motion. The other side may rely on *Marsh's case*,<sup>a</sup> when the court said, "The true distinction is, that where a man is committed for any crime, either at common law or created by act of parliament, for which he is punishable by indictment; then he is to be committed to be discharged by due course of law, but when it is in pursuance of a special authority, the terms of the commitment must be special and exactly pursue that authority." But opposed to that is *Goff's case*,<sup>b</sup> where a collector of rates was committed by the jus-

tices for refusing to account and pay over monies he had received; the warrant concluded by directing the gaoler to keep him in custody until he should be discharged by due course of law. The court held the commitment good, and that it was the same as if the warrant had directed the gaoler to detain him till he had accounted. But supposing the court should be of opinion that the warrant of commitment was defective, still the court has power to remand the prisoner if it should satisfactorily appear from the depositions (which are returned) that an offence has been committed, which was contemplated by this statute. It is the constant practice of the court to remand persons back to custody, where the court sees from the depositions that an offence has been committed.

Mr. Montague Chambers in support of the application, was not called upon by the court.

Lord Denman, C. J. We cannot help feeling that it is a matter of regret that the first application under an act of parliament, which may be so important to the interests of the two countries, should have such a termination. We have not any power over the prisoner, neither has the gaoler, except that which the late act of parliament has conferred. When we come to look at the warrant, it appears to be perfectly clear that the power here given to arrest the party is one which has not been strictly and correctly pursued. The warrant, therefore, cannot be maintained. In *Goff's case*, the authority was in substance and almost in phrase complied with. The person was directed to do what the act required him to do, namely, to account. We have nothing to do with this crime except from the warrant, and when we refer to the warrant we find it defective in some most important respects. All the power we have is under the act of parliament, and if its provisions are not strictly complied with, we have no power at all in the matter. It would have been unnecessary to pass this statute if the application made by the learned counsel had been one, which, without such a statute we could entertain, solely upon the authority of the statements in the depositions annexed to the warrant.

It is fit that it should be understood, that this is an application for a habeas corpus at common law. The right to make such an application was not first created by the acts of 31 Car 2, or the 56 G. 3, c. 100. It is a right as old as the law, and was expressly declared by the bill of rights to be so. Those statutes only provide means to facilitate the claiming of the right.

The prisoner must be discharged.

*In re Besset.* Michaelmas Term, 1844.

#### Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

ATTACHMENT.—MOTION TO DISCHARGE A PARTY.—AFFIDAVIT.—TITLE.

*The affidavit to found a motion to discharge an attorney, in custody under an attachment for disobedience to a rule of court, must be*

<sup>a</sup> 2 W. Bl. 805.

<sup>b</sup> 3 M. & S. 203.

entitled on the crown side of the court, and not in the name of the parties to the original suit.

Crowder had obtained a rule nisi, returnable in two days, to discharge out of custody Mr. Thomas Eyre Weston, an attorney, who had been taken under an attachment for disobedience to a rule of court, on the ground that he had since cleared himself of the contempt.

Platt, who appeared to show cause, took a preliminary objection to the affidavit on which the rule had been moved, which was entitled in the original suit of *Brown v. Edwards*, out of which the attachment arose; whereas, he submitted, as soon as the attachment has issued the proceeding is at the suit of the Queen, and should be entitled on the crown side of the court; that the present affidavit, therefore, should have been entitled *Reg. v. Weston*. In a case *Brown v. Edwards*.

Patteson, J.—That is no doubt so. The rule must be discharged. The application may be renewed on fresh affidavits, properly entitled.

*Reg. v. Weston.* Q. B. P. C., M. T., 1844.

### HEARING ATTORNEYS AT QUARTER SESSIONS.—PRE-AUDIENCE OF COUNSEL.

At the recent quarter sessions at Lichfield, the chairman was requested by one of the counsel present to give his decision upon a question raised at the previous sessions, as to the right of attorneys to plead in the presence of barristers.

The Chairman stated that he had consulted Lord Denman upon the matter, and his lordship had decided that attorneys should be allowed to plead, either for the prosecution or for the prisoners; that barristers should be allowed pre-audience, but not exclusive audience.

### PROPOSED CHANGE OF THE TERMS AND CIRCUITS.

A SUGGESTION has been made which has already attracted considerable attention relative to the time of holding the Terms and Circuits. The alteration in this respect effected by the late Lord Abinger's Act for "the better Administration of Justice," 11 Geo. 4 & 1 W. 4, c. 70, has not produced all the convenience and advantage which was expected; and the pressure of business at the assizes has led to the suggestion of further alterations. Our readers are aware that there has been a winter circuit for the trial of criminal cases during the last few years. It is now proposed—

That there should be three circuits of the judges in each year to determine as well civil as criminal cases.

That in order to fix such circuits at a time which will not interfere with the business in London, "the time of term" should be altered by consolidating Easter and Trinity Terms.

It is then supposed that the summer circuit may commence earlier than heretofore, leaving more of the autumn for vacation, and giving sufficient time for the winter circuit, by throwing Hilary Term, or part of it, into the month of February.

Our first impression is rather in favour of this plan. The four terms at present occupy ninety-one days, including Sundays. If this sitting *in Banc* were divided into three terms, each would be thirty days; and they might be fixed at such seasons of the year as are adapted to the changes which have taken place in modern times.

At present the matter has not been very maturely considered; but amongst other arguments it may be urged, that if civil business as well as criminal, could be heard and determined three times in the year in all parts of the country, there would obviously be no occasion for erecting local courts, or appointing an inferior class of judges, and encouraging a low grade of practitioners both as barristers and attorneys. See, on this subject, the example of France, p. 119, *ante*.

We shall advert again to this subject, after the proposal has been further considered and assumed a more definite shape.

### THE EDITOR'S LETTER BOX.

We think that the practice of publishing answers to the questions at the examination, is worse than useless to the student. If they could be perfectly relied on, such detached scraps of legal learning are rarely remembered; whilst the solid and enduring knowledge which may be acquired by the student's consulting works of authority and finding answers for himself, will be lost, and the advantage of a regular course of reading neglected.

The letter of Z., suggesting the establishment of Law Lectures in large towns, shall be noticed.

The question of a subscriber as to a receipt stamp being necessary for the gross amount of rent, not deducting the income tax, shall be considered.

**The Legal Observer,**  
**OR,**  
**JOURNAL OF JURISPRUDENCE.**

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SATURDAY, DECEMBER 21, 1844.

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—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

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**THE REGULATIONS OF THE INNS  
OF COURT.**

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WE have already adverted to the cases affecting the character of the bar which were dragged before the public by the newspapers. We have reason to believe that these painful matters have engaged the careful and anxious attention of the benchers of the inns of court, to which they particularly belonged; and we are happy to say that these learned persons have shown, and are showing, themselves sufficiently alive to the honour of the profession, which is in their keeping, and we have no reason to suppose that they will not do their duty, if any instance of unprofessional or improper conduct is satisfactorily made out. We need not say that an accusation of this nature, brought against a member of the same profession, must not either be lightly made, or punished without the clearest proofs. To bring a charge of this nature, and to fail in its proof, would deserve the severest reprehension; and if such charge were unjustly made or promoted by one member of the profession against another, either from malignity or wanton desire of notoriety, the accuser would in fact deserve the punishment which he attempted to bring on the accused. We shall not be unwilling to recur to this subject when any further authentic facts are known to us; but we have throughout approached it with the utmost caution, unwilling to inflict unnecessary pain, or give a tittle of currency to what may possibly turn out to be a mean and wicked slander.

Be the result what it may, this good has come from it: it has turned the public attention, and, as we believe, that of the benchers, to the state of the inns of court, to the regulations now in force as to admissions to the bar, and we have reason to think that they are now generally considering the subject with a view to the further safety and protection of the profession and the public. This seems, then, a fitting opportunity of making one or two observations on the matter.

In the first place, then, one great object should be, as we have already repeatedly said, to establish uniform regulations in all the inns of court. At present, one society makes one rule, another society another; one is very rigid, another is very lax; one is perhaps desirous of increasing its members, another has more than enough; and all this leads to great uncertainty and irregularity. If this, however, were all, it would not be very material; but a far more disastrous consequence ensues. Each society has the power of conferring the degree of barrister; and so long as the gown is on the back, no one asks, or thinks, or at all events cares, which society has conferred it. The disreputable person, therefore, repairs to the inn of court where he may most easily obtain his license to practise, and laughs at the stricter regulations of the other inns of court. We trust, then, on every ground, that the regulations of all the four inns of court, as to the admission and call to the bar, will be rendered uniform.

The other point to which we would at present respectfully direct the attention of the benchers is, that they should devise

some more efficient regulation of that part of the profession called "certificated conveyancers." To those members of that branch of the profession who *bond fide* practise as such, receiving business through the regular channels, there can be no possible objection; they are few in number, but are many of them highly respectable and learned men. It is not to them we allude; no, it is to a sort of bastard practitioner, who practises neither as conveyancer nor attorney, but stoops to dealings which would be tolerated by neither, and yet unfairly deprives both branches of business; often, from ignorance or a worse cause, working much mischief. This class of practitioners now find protection in the inns of court, and we call the attention of the benchers to them past, present, and future. It may be necessary that they should obtain admission; but after admission, some more stringent regulations should be made as to them than at present exist. It is true that in some of the inns of court—and here the want of uniformity meets us—all certificated conveyancers have been ordered, on pain of expulsion, to obtain an annual permission to practise, but this we fear is only in *terrorem*; but if the regulation is really issued in earnest, we do submit, that if practices of the nature we allude to are proved, a withholding of a permission to practise should follow; and if the practice were nevertheless continued, expulsion should be inflicted.

We shall return, from time to time, to this subject, which we find is at last awakening general attention. We have hitherto toiled on in this work of reform without much encouragement: we now begin to see a glimmering of the true light appear.

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### THE JUNIOR EQUITY BAR.

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We gladly extract the following case:—

One of the Taxing Masters, on the costs of a motion having been referred to him, considered that the application was not of sufficient importance to justify the employing two counsel to oppose it, and therefore disallowed the fees paid to the junior barrister, and also the solicitor's charges for attendance on him. The sum disallowed amounted to 5*l.* 8*s.* The plaintiffs thereupon presented a petition, praying that the petitioners might be allowed the several

sums before mentioned, and that it might be referred back to the Taxing Master to review his taxation. Sir L. Shadwell, V. C. said, "With respect to the fees paid to the junior counsel, my opinion is, that there has been a miscarriage, and though the sums are small, yet the principle is very important. I remember perfectly well many years ago observing Sir Anthony Hart refuse to take a brief merely because there was no junior counsel with him." [Mr. Bethell.—This is the rule in causes now: no one of us takes a brief in any cause without a junior.] "And I remember that Lord Eldon said, in the House of Lords, (when there was some objection made to the fact of two counsel appearing,) *that it was of extreme importance to the public at large that there should be a successive body of gentlemen brought up, who should understand their profession by knowing it from the beginning: and in my opinion it would be most injurious, not merely to the gentlemen who compose the bar at this particular time, but to the public at large, if the supply of able men were to be cut off by preventing the younger branches from learning their profession; the consequence of which would be, that it would be a matter of chance whether, when the gentlemen who are within the bar drop off, their place would be supplied by persons of sufficient learning and ability. I shall therefore refer it back to the Master to review his taxation.*" *Cooke v. Turner*, 12 Sim. 649.

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### THE TRANSFER OF PROPERTY ACT.

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WE have elsewhere printed another portion of Mr. Shadwell's lectures on the Transfer of Property Act. As this act is of considerable importance, and is likely to lead to considerable results in practice, and it is our intention, from time to time, to assist its operation in practice; and it is our intention to give a faithful commentary on its provisions, and, when necessary, to furnish precedents. So far as we can learn at the present time, no immediate alteration in deeds will be made on the ensuing 1st of January, when the act comes into operation, unless it be in the omission of the usual clause protecting contingent remainders. We think it necessary to say this, as we find in one

edition of the act<sup>a</sup> the following passage :  
 “ The forms of conveyances at present in use will not be materially varied. The reference, in conveyances of freehold estates, to the statute for dispensing with a lease for a year,—the ordinary limitations or settlements by deed or will to trustees for preserving contingent remainders, and powers to trustees to give discharges,—*will not be required after the expiration of the present year* ; but the insertion of such clauses after that time, *though useless*, will not be productive of any ill effect.” (p. 9.) We apprehend that if any of these forms were useless, its insertion would be productive of ill effect. But we are not as yet prepared to say they are useless. We recommend our readers, therefore, to pause before they act on Mr. Sweet’s suggestion, until it be seen what the general body of the profession agree to do. A similar observation applies to an alteration recommended by the same gentleman, and by others, in consequence of the 11th section, which enacts that indentures shall no longer be necessary. Mr. Sweet furnishes certain precedents, commencing—“ A deed made between,” &c., and seems to recommend that in *all* recitals of indentures they should not be recited as indentures, but as *deeds*. (pp. 22-30.) The latter recommendation appears open to many objections ; and even the former is so doubtful, that we cannot recommend any of our readers at present to abandon the old words “ This indenture ;” and we rather think that the general practice of the 1st of January, 1845, in this respect, will be the same as that of the 31st of December, 1844.

### THE NEW COMMISSIONERS OF BANKRUPTS.—AMENDMENT OF THE LAW.

OUR readers will remember that on the death of Mr. Merivale, Mr. Serjeant Goulburn, then acting at Exeter, was appointed to fill his place in London. Mr. Commissioner Bere was subsequently removed to Exeter from Leeds : his place at Leeds has been filled up by the appointment of Mr. Boteler, the Queen’s Counsel.

<sup>a</sup> The stat. 7 & 8 Vict. c. 76, &c. By George Sweet, Esq., of the Inner Temple, Barrister-at-law, intended as a supplement to the third edition of Jarman and Bythewood’s Conveyancing. 1844.

This is a very judicious and proper appointment.

We expect soon to be called upon to take into consideration one or more bills for the amendment of the laws of Bankruptcy and Insolvency. They are in a very unsatisfactory state in reference to the interests of creditors. The difficulty will be found to consist in the multiplicity of schemes of alteration in the Law of Debtor and Creditor. We had last session three distinct measures.

### THE LAW OF ATTORNEYS.

#### EAST INDIAN ATTORNEYS.

By the charter constituting the supreme court at Bombay, and stat. 4 Geo. 4, c. 71, the judges of the supreme court were authorised to admit and enrol as advocates, such persons as might be *bonâ fide* practising as such in the Court of the Recorder, and also as advocates all persons admitted as barristers in England or Ireland ; and as attorneys, all attorneys or solicitors in one of her Majesty’s courts at Westminster ; and it was also declared, that no other person whosever should be admitted to appear and plead, or act on behalf of the suitors.

On the 13th of November, 1834, the supreme Court of Judicature promulgated a rule as to the admission of attorneys, which was inconsistent with the charter, and an attorney was admitted in consequence. The question was, how far this act of the court was justified. Dr. Lushington, who delivered the judgment of the Judicial Committee of the Privy Council, said : “ It seems difficult to understand how any doubt could be raised as to the meaning of a clause so clearly expressed, but it appears that the court at Bombay entertained the opinion that the authority incident to a court of justice to regulate the appointment of its own practitioners, was not restricted by this charter. It is not said that the charter could not restrict such power, whatever it may be, for that would be a proposition utterly untenable, but that the charter, duly construed, produces no such effect. This at once brings back the question to the interpretation of the charter. Now, one of the first rules of construction is, that effect shall, if possible, be given to every part of the instrument. But if the proposition contended for by the supreme court at Bombay could be entertained, the consequence would be that the negative part of the clause would be wholly inoperative. It is clearly impracticable to adopt a construction so wholly repugnant to the first principle of interpretation, and so repugnant to the plain meaning of the words. There is no room for argument that this charter is merely directory of what shall be done, and therefore open to the possible construction



that what was permitted before was still allowed; for it is not merely directory of what shall be done, but is expressly declaratory of what shall not be done. \* \* \* It appears therefore to their Lordships, that the respondent not being qualified to be admitted according to the charter, the supreme court had no power to exercise any further discretion in the matter, and that the appeal must be pronounced for, and the rule admitting him and the rule refusing to strike him off the rolls rescinded." *Morgan v. Leech*, 3 Moo. 368. The effect of this decision is, that the right of practice in the supreme court of India is given exclusively to barristers and attorneys duly called to the bar and admitted in the English courts.

## NOTICES OF NEW BOOKS.

*New Commentaries on the Laws of England, (partly founded on Blackstone.)*  
By HENRY JOHN STEPHEN, Serjeant at Law. Vol. III. London: Henry Butterworth, 1844. pp. 744.

HOLDING it to be our business and duty to give an account to our readers of all works of importance to the profession, we proceed to notice the 3rd volume of Mr. Serjeant Stephen's *New Commentaries on the Laws of England*. The 1st and 2nd volumes have been already reviewed in the *Legal Observer*, accompanied by such remarks as appeared requisite on the plan of the work—differing as it does from the long-accustomed method of editing the *Commentaries* of Sir William Blackstone.

The present volume differs more from Blackstone in the selection of subjects than any other of the "New Commentaries." The third part especially, which the learned author calls "the *Social Economy* of the Realm," comprises several new heads of law of great importance.

The former volume consisted of three books,—the 1st on *personal rights*; the 2nd on the *rights of property*; and the 3rd on *rights in private relations*. This volume is divided into two books, the 4th being on *public rights*, and the 5th on *civil injuries*.\*

The 4th book is divided into three parts.

Part I. treats of the *civil government*, including the nobility and other ranks;—the magistrates and other public officers.

Part II. treats of the *church*, wherein of the ecclesiastical authorities;—the doctrines and worship of the church, and the laws as

to heresy and nonconformity;—the endowments and provisions of the church;—the extension of the original church establishment: chapels, new churches and chapels, and new ecclesiastical districts and parishes.

Part III. treats of the *social economy* of the realm, comprehending the laws relating to corporations;—the laws relating to the poor;—the laws relating to charities and benevolent institutions;—the laws relating to lunatic asylums and their management;—the laws relating to gaols;—the laws relating to highways;—the laws relating to trade and navigation;—the laws relating to pestilence and contagion;—the laws relating to public carriages and conveyances;—the laws relating to the press;—the laws relating to houses of public recreation and entertainment;—the laws relating to professions;—the laws relating to banks;—the laws relating to the registration of births, deaths, and marriages.

The 5th book relating to civil injuries, comprehends: 1. The redress of civil injuries by the mere act of the parties; 2. Redress by the mere operation of law; 3. The courts in general; 4. The courts of general jurisdiction, common law and equity; 5. The courts ecclesiastical, military and maritime; 6. Courts of special jurisdiction; 7 and 8. Civil injuries cognizable in the common law courts, and herein of the remedy by action generally; 9. Limitation of actions; 10. The proceedings in an action; 11. Proceedings in some particular actions; 12. Other remedies in the courts of common law; 13. Civil injuries cognizable in the ecclesiastical, military, and maritime courts, with their remedies.

As an example of the author's method of stating the recent statutes, we shall extract his summary of the 6 & 7 Vict. c. 73, for consolidating and amending the law of *attorneys and solicitors*.

"The statutes relating to this branch of the legal profession being very numerous and complicated, were amended and consolidated by 6 & 7 Vict. c. 73, by which the previous enactments as to the qualification, admission, and regulation of attorneys and solicitors are repealed.

"By this statute it is enacted, that no person shall act as an attorney or solicitor, or as such sue out any writ or process, or commence, carry on, solicit or defend, any action or other proceeding in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or in any court of law or equity in England or Wales, unless he shall have been

\* The remaining volume, or 6th book, will treat of *crimes*, and the mode of prosecution.

admitted, enrolled, and be otherwise duly qualified, to act as attorney or solicitor, either previously to, or else in pursuance of, the present statute.<sup>b</sup>

"To entitle a person, for the future, to this admission and enrolment, it is required, 1st, that he shall have served (having been duly bound by contract in writing so to do), with some practising attorney or solicitor in England or Wales, a clerkship of five years;<sup>c</sup> or if he shall have taken a degree under such circumstances, as in the act mentioned, at Cambridge, Oxford, Dublin, Durham, or London, a clerkship of three years.<sup>d</sup> And 2ndly, that in addition and subsequently to such services he be examined by, or by direction of, one or more of the judges at Westminster, or (in the case of a solicitor) by the Master of the Rolls, touching his articles, service, fitness and capacity to act.

"For this purpose the judges, or any eight of them, including the three chiefs, or (in the case of a solicitor) the Master of the Rolls, may from time to time appoint examiners, and make such rules as to the examination as they may think proper;<sup>e</sup> and the judges, or any one of them, upon being satisfied by such examination, or by the certificates of such examiners, of the competency of any candidate for admission, shall administer to him such oath as specified in the act, viz. "that he will truly and honestly demean himself in practice," and also the oath of allegiance; and after such oaths shall cause him to be admitted as an attorney of the said courts of law at Westminster, or as solicitor of the High Court of Chancery, as the case may be, and his name to be inrolled as an attorney or solicitor of such courts; which admission shall be written on parchment, signed by such judge or judges, or Master of the Rolls, and impressed with the proper stamp.<sup>f</sup>

"It is moreover enacted, that there shall be a registrar of attorneys and solicitors, whose duty it shall be to keep an alphabetical list or roll of all attorneys or solicitors, and to issue certificates as to persons who have been duly admitted and enrolled; and the duties of this office are by the act committed to the "Incorporated Law Society," until some person shall be appointed in their room.<sup>g</sup>

"Such a certificate from the registrar of due admission and enrolment must be produced to the commissioners of stamps and taxes by any person desirous of practising as an attorney or solicitor, before he can obtain from them the stamped certificate required by the Stamp Act,

55 Geo. 3, c. 184,<sup>h</sup> authorizing him to practise for the ensuing year;<sup>i</sup> and, in order to obtain such registrar's certificate, a declaration in writing, signed by the attorney desirous of practising, or by his partner, or, in some cases, by his London agent, containing his name and address, the courts of which he is an admitted attorney or solicitor, and the date of his admission, must be delivered to the registrar.<sup>k</sup> And if any attorney or solicitor shall practise in any of the courts aforesaid, without having obtained a stamped certificate for the current year, he shall be incapable of maintaining any action or suit to recover his fees or disbursements for business done under such circumstances.<sup>l</sup>

"The statute we are considering also contains the following regulations;—among others of less general interest:—

"That no attorney or solicitor shall have more than two clerks bound by contract in writing as aforesaid at one and the same time, nor any such clerk after he shall have left off business, nor while he himself acts as a clerk; and that if he become bankrupt, or take the benefit of the Insolvent Act, or be imprisoned for debt for twenty-one days, the court may order his clerk to be discharged or assigned over to some other person.<sup>m</sup>

"That a person so bound as aforesaid as clerk for five years, to an attorney or solicitor, may serve one of those years as pupil with a practising barrister, or certified special pleader, or with the London agent of the attorney or solicitor to whom he is bound.<sup>n</sup>

"That clerks whose masters have died or left off business during the term, or whose articles have been cancelled or discharged, may enter into new articles with other masters, which shall be available for the residue of the term.<sup>o</sup>

"That all persons admitted as attorneys of one of the superior courts of law at Westminster may, upon production of a certificate thereof, be admitted in any other court of law in England or Wales, upon signing the roll of the same; and that persons admitted as solicitors in the High Court of Chancery may in like manner obtain their admission in all other courts of equity, and in the Court of Bankruptcy.<sup>p</sup>

"That no attorney or solicitor, who shall be a prisoner in any gaol or prison, may com-

<sup>b</sup> See schedule 1, part ii. of 6 & 7 Vict. c. 73.

<sup>i</sup> Sec. 22.

<sup>k</sup> Sec. 23.

<sup>l</sup> Sec. 26.

<sup>m</sup> Secs. 4, 5.

<sup>n</sup> Sec. 7. If he is bound for three years, under the exception mentioned above, he may serve one year with the London agent of the attorney or solicitor to whom he is bound.

<sup>o</sup> Sec. 13.

<sup>p</sup> Sec. 27. An attorney has by the common law the privilege of not being liable to be sued (generally) except in the court or courts to which he belongs. See *Gage's case*, Hob. 177; *Gardner v. Jessop*, 2 Wils. 42; *Lewis v. Kerr*, 2 Mec. & W. 226.

<sup>b</sup> By 7 & 8 Vict. c. 101, s. 70, however, clerks and officers to boards of guardians, &c. under the poor law, may commence or defend proceedings before magistrates in special or petty sessions, or out of sessions, without being so qualified.

<sup>c</sup> Secs. 2, 3. See 7 & 8 Vict. c. 86, repealing 34 Geo. 3, c. 14, as to the enrolment of the indentures of clerks to attorneys.

<sup>d</sup> Sec. 7. <sup>e</sup> Secs. 16, 17, 18.

<sup>f</sup> Secs. 15, 16.

<sup>g</sup> Sec. 21.

mence or defend any action, suit, or proceeding in law, equity, or bankruptcy, or maintain an action for fees for business done during such his confinement;<sup>4</sup> and that no practising attorney or solicitor shall be a justice of the peace in England or Wales, except in counties or towns corporate having justices by charter or otherwise.<sup>5</sup>

"And that no attorney or solicitor shall commence an action or suit for his fees or charges in respect of any business whatever, until after the expiration of one calendar month after a bill of such costs and charges, signed by such attorney or solicitor, shall have been delivered to the party to be charged; and such party may, on a proper application, obtain an order for referring such bill to be taxed, and for staying all proceedings to recover the amount thereof in the meantime. An order may also be obtained directing an attorney or solicitor to deliver his bill, (when he has not done so,) and also an order for his delivering up all deeds, papers, and documents in his possession or power touching the business in such bill comprised.<sup>6</sup>

"It is provided, however, that the act shall not extend to the examination, admission, rights, or privileges of any person appointed to be solicitor to the treasury, customs, excise, post-office, stamp duties, or any other branch of the revenue, or the solicitor of the city of London, or the assistant of the council for the affairs of the admiralty or navy, or the solicitor to the board of ordinance."<sup>7</sup>

Such is the learned serjeant's view of the effect of the new act, and we think he has succeeded in stating it clearly and concisely. But he has omitted the material clauses authorising the taxation of bills on the application of third parties, (s. 38); and by persons interested in the property out of which trustees or executors may pay bills of costs, (s. 39); also taxations after payment of a bill within twelve months, (s. 41). That part of s. 37 which enables a bill to be taxed whether the business be transacted in court or not, (such as conveyancing charges,) should also be stated, being an important advantage to the public, in return for some just concessions to the profession. There are some other of the recent statutes, the scope of which, as ably compressed in this volume, we may hereafter state.

We need scarcely say, that the sound learning and well-known merit of the learned serjeant, as a legal writer, are amply shown in the present, as in the former volumes of these *New Commentaries*, and they will deservedly take their place

among the standard elementary works on the laws of England.

## LAWS OF MORTMAIN.

### REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS.

THE following report has just been printed of the select committee appointed to inquire into the operation of the Laws of Mortmain, and of the restrictions which limit the power of making gifts and bequests for charitable and religious uses. The committee consisted of Lord John Manners, Mr. Shaw, Mr. C. Buller, Viscount Clive, Mr. Smythe, Mr. Brotherton, Sir George Grey, Mr. Eliot Yorke, Mr. James Wortley, the Earl of Arundel and Surrey, Sir John Y. Buller, Mr. Milnes, Mr. Sotheron, and Mr. Dickinson.

"Your committee have thought it right to consider carefully, and at some length, the origin, progress, and present state of the law of mortmain in England; and for the purpose of throwing light on matters naturally obscure, have turned their attention to the laws on the subject which obtain not only in other parts of the empire, but also in foreign countries.

"The mortmain laws had their origin in a state of society widely different from the present; and nearly, if not all, the reasons which appears to have induced the Plantagenet and Tudor kings and parliaments to enact the various laws restraining the alienation of real property, first to religious, and subsequently also to lay corporations, from the time of magna charta down to the Reformation, exist no longer. The learned and interesting evidence of Sir Francis Palgrave shows that those restrictions were imposed not only from jealousy of the great and increasing power of the religious bodies, but also with a view of preserving to the lord, and to the king, as the chief lord, the advantages and incidents of tenure, and of maintaining the military defences of the kingdom, which were weakened whenever land, which then sustained all the civil and military burdens of the state, fell into mortmain.

"With the destruction, therefore, of the religious houses of the Reformation, the gradual decay of military tenures, and their entire abolition after the restoration, the chief political reasons for stringent mortmain laws ceased: and your committee would direct attention to the significant fact, that from the reign of Queen Elizabeth to the accession of the house of Hanover, the general tenor of the public mind, as evidenced by the legislature, the judiciary, various royal proclamations, and the acts of numerous private persons, was strongly in favour of alienation of property, real as well as personal, to pious and charitable purposes.

"Your committee, aware that no law can be

<sup>4</sup> Sec 31.

<sup>5</sup> Sec. 33, 39. [q. 34.]

<sup>6</sup> Secs. 37.

<sup>7</sup> Sec. 47.

properly understood unless the reasons on which it was founded, and the evils against which it was intended to guard are known, have endeavoured to make themselves acquainted with the causes which led to the passing of the 9th of Geo. 2, c. 36, which is in fact the mortmain law at this moment. Although the reasons which led to the original enactment of mortmain laws, and those which subsequently induced their mitigation and discontinuance, appear to have been those stated in the preceding paragraph, your committee have failed to arrive at any certain knowledge of the true grounds on which the act of Geo. 2 was passed. Indeed, the insufficiency of the reasons assigned in the reported debates is such as would rather lead to the inference that some apprehensions, which it was not thought wise to make public, must have operated in addition to the avowed motives of the legislature.

"The provisions of this law, which prevents lands, or anything savouring of the realty, from being conveyed to any body or bodies, politic or corporate, for any charitable purpose, unless by deed executed twelve months, and enrolled six months previous to the donor's death, have been construed by the judicature in the strictest sense their words would bear. Copyhold property, money out on mortgage, land left to be converted into money, money left to be converted into land, and, as it is asserted, railroad and canal shares even when declared by act of parliament to be personal property, are all held to be affected by that statute, and the courts refuse to marshal assets in favour of any public object, however charitable or beneficial.

"Your committee would here point out the inconsistency which runs throughout this favourable construction of the law. The recital of the act states its objects to be, to prevent the disposition of lands whereby the same shall become inalienable. But lands left with a direct injunction that they should be sold, meet with no more favour than bequests of personalty to be converted into land: although in the similar case of a bequest to an alien, the legatee, who is disqualified from holding the real property, is allowed to take it as money. Again, although the law will marshal assets so as to throw upon the real estate 'debts and other charges ordinarily chargeable upon the personal estate of the testator, thus exonerating the latter for the benefit of the legatee, it refuses to marshal assets in favour of charitable legacies, nor will it permit them to be charged upon, or satisfied out of the land, or other real estate of the testator, nor indeed out of any of his personal estate, partaking in any manner of the nature of realty.' Supposing, therefore, the alleged object of the statute to be a proper one, it appears to your committee that land left to charities, with a direction to be sold, and all virtually personal property, do not fairly come under the intent of that statute, nor do they think it just that charitable legacies should alone be excepted from the advantage of having assets marshalled in their favour. Upon

this point your committee would direct especial attention to the valuable opinion of Mr. Jarman, quoted by Mr. Hadfield.

"With respect to the operation of this statute, your committee find that while many good and charitable purposes have been thereby defeated, litigation and the unjust disherison of heirs have not been prevented. That it should have failed in both these objects, the former of which was alleged in the debates, the latter in the preamble of the act, is not surprising, because, with the exception of such purposes as are forbidden by the general rules of common law, an entire freedom is allowed to a testator, who may dislike his heir, of leaving his property to any person, or any object that does not come under the designation of a charitable use, and because, as Mr. Jarman points out, 'where the feelings of mankind are not in unison with the provisions of the statute-book, ingenuity is racked for evasive expedients, and a testator will sometimes rather confide his property to the honour of a stranger, than abandon a scheme to which he is impelled by a conscious rectitude of purpose.' Of the truth of this opinion your committee have had abundant evidence on the petitions which were referred to them; but in consequence of the peculiar nature of that evidence, containing reflections on private character, and in many instances not bearing at all on the general object of their investigation, your committee have exercised a discretion in suppressing certain portions of it. It appears, however, from the reported evidence, that the law, rendered more stringent as regards Roman Catholics by the statute against superstitious uses, is evaded by them without much difficulty, and the mode of evasion, not unfrequently, it would seem, among them, is not, the committee would observe, practised by them alone. From all this it would appear, that while the astute and determined man may balk the expectations of his heirs, many a laudable and just design is defeated through the intricacies and perplexities of this law.

"In order to arrive at a knowledge of the laws respecting mortmain and charitable uses and trusts in other countries, with a view of comparing them to those in England, your committee have taken the evidence of a learned German jurisconsult, M. Bach, which, with the information afforded by Mr. Burge, the Lord Advocate of Scotland, the right honourable Anthony Blake, Mr. Field, and Mr. Milnes, enable them to state that in Germany, France, Italy, Spain, the United States of America, the British Colonies, Ireland, and Scotland, the laws are far more favourable to charity than in England; nor can they learn that any jealousy is felt of, or any evil occurs from, the latitude allowed, even in Catholic countries, to charitably-disposed persons to dispose of the whole or a large portion of their real property to pious or charitable purposes. In the countries of continental Europe, that provision of the old civil law which sets aside a *portio legitima* for the ascendants or descendants of a testator, and which once had its counterpart in the law of

England, is, up to this day, found to be a sufficient protection to the heir, while the power exercised by the sovereign, of ratifying or annulling bequests to particular charities, secures the community from the damage or scandal which a dangerous or improper disposition might give rise to. At present it is a matter of just astonishment to intelligent foreigners, that while the laws of Ireland, Scotland, and our colonies assimilate more or less to those of continental Europe in this matter, those of England stand alone in their uncharitable strictness; and this unfavourable distinction appears to them, as it does to your committee, the more unintelligible, because 'in this country all the great benevolent institutions are supported, not by the state, but by gifts of private individuals;' whereas in those countries the state undertakes to perform many of those necessary and charitable duties, which, at the same time, it encourages private munificence to aid in fulfilling.

"Having thus brought before your notice, as succinctly as is possible, the present state and practical operation of the mortmain laws in England, their origin, inconsistency, and complexity, the means which exist of evading them, the opportunity thus afforded to fraud and deceit, and the wiser and less restrictive laws which obtain in other parts of our own empire, as well as on the continent of Europe, and in the United States of America, your committee think it right to add that they have carefully considered the objections which are popularly taken against a relaxation of the existing laws. These objections, like many of a popular nature, appear to have their foundation rather in historical tradition, than in a clear perception of the truth, and the feelings on which they rest may be classed as personal, religious, and political.

"The personal objection arises from a dread lest the just expectation of the heir should be defeated, if license to alienate real property by will to charitable purposes were allowed a testator. If however the expectations of the heir are to be preferred to the wishes of the testator, the performance should obviously be enforced not against charitable uses alone, but against all dispositions other than to the heir; yet the law allows a man to pass over his wife and children, and to leave his property to an entire stranger. And there seems to be great truth in the opinion expressed by a witness, that if it was thought necessary to secure the heir from being disinherited *quoad* real property, there was even more cause for guarding him against disinheritance *quoad* personalty, inasmuch as the pride of ancestry, and the wish to hand down to posterity landed estates, are likely to operate in the former case as a safeguard to the heir, which he is deprived of in the latter; whereas the law leaves that personalty at the free disposal of the testator. Your committee would likewise suggest that the fact of a person being anxious to leave a portion of his property to pious and charitable purposes, is in itself some evidence of his being actuated by high and

moral feelings, and therefore unlikely to forget the sacred claims of kindred and dependents.

"The only imaginable case in which these considerations may be supposed unavailable is that which your committee have recognised as the religious objection, namely, the fear lest undue influence over the mind of a dying or languishing person, should be exercised by a minister of religion in favour of charity or religion, to the prejudice of the heir. And this is certainly the objection to which they are inclined to attach the most weight. Lord Hardwicke is even reported to have said, 'One of my chief reasons for laying a restraint on such donations is, lest the clergy of the Established Church should be tempted and instructed to watch the last moments of dying persons, as insiduously as even the monks and friars did in the darkest times of superstition and popery; and if ever we should have an ambitious clergyman for a prime minister, it would be the only way to acquire an interest at court, or preferment in the church.' Your committee would refer to the remark of the Bishop of London on this dictum, and indeed to all experience of the past, as depriving this objection of most of its force as far as it relates to the Church of England; and they cannot but think that the authoritative statements of Dr. Cox, with respect to the doctrine of the Church of Rome, the sentiments of those who guide its practice, and the influence of public opinion on the great body of its clergy, are sufficient to dispel apprehension of the influence of the Roman Catholic priesthood. But while they think the popular fears on this subject exaggerated, your committee admit the propriety of guarding against possible abuses by provisions founded on such principles as that of the Scotch law of deathbed, by which the heir can defeat a will made to his prejudice within sixty days before death, if the testator were then ill of his mortal disease, or that of the Code Napoleon, which renders the confessor incapable of inheriting from his penitent; as well by safeguards similar to that contained in the measure now before parliament for regulating charitable bequests in Ireland.

"With respect to the third objection, that which is taken on political grounds, your committee believe very few people would be disposed to urge it at this day. The whole argument derived from the incapacity of land in mortmain to sustain the feudal civil and military incidents obligatory on the land, has for two hundred years ceased to have force, or even meaning, as applied to existing tenures. The dread entertained by political economists lest land held in mortmain, should not be available for commercial purposes, must be now greatly mitigated by those alterations in our laws whereby every clergyman may now lease his land for farming purposes, in the same manner as lay landlords do: and your committee would direct attention to the suggestions of Sir F. Palgrave and Mr. Hadfield, with respect to the possibility of devising means whereby land in trust for public purposes

might, with due provision for the re-investment of its proceeds, be allowed to come into the market. The evidence of Mr. Cripps and Mr. Frere shows that charitable estates may be managed in every respect with as much benefit to the general interests of the community as those of private individuals.

"But among some even of those who are inclined to attach no great weight to such objections against a more liberal law with respect to donations for charitable and public purposes, an opinion seems to exist that the various exemptions which from time to time have been granted to particular charities, are so many and so ample, as practically to amount to all the relaxation of the law that is necessary. But even if this were a correct view of the practical results of the existing law, it should seem to be but an unsound state of things, when exemptions from a law are of such magnitude as to deprive that law of vitality and power. But upon mature deliberation, your committee cannot coincide in the belief that the exemptions are such as to render further relaxations undesirable. The whole tenor of the evidence submitted to them on this point is, that although many good and charitable purposes are exempted from the stringent operation of those laws, many difficulties still remain, even in the most favoured cases, and many good and excellent objects are either altogether proscribed or surrounded with peril, owing to their operation. Our experience, indeed, of the results of these partial exemptions, is calculated to dispel many of the objections felt to an uniform modification of the present system of restriction. Your committee would direct attention to the fact, that even to Queen Anne's Bounty, a charity more favoured by the law than perhaps any other, the amount of landed property bequeathed by will has not been so considerable as to warrant an apprehension that were the same favour extended to other charities, any great portion of the land of the country would fall into mortmain.

"In submitting this report to your consideration, your committee would remark, that from the intricacy and delicacy of the question, the nicety of its details, the conflicting judgments and opinions of eminent lawyers on various points, they find it impossible to present in a report, with entire confidence in its accuracy, a full and explicit abstract of the law practically in operation with respect to mortmain and charitable bequests; they therefore beg leave to refer for a copious and learned digest of the historical part of the question, to the evidence of Sir Francis Palgrave, corroborated, as it is, in a remarkable manner by that of Mr. Burge; to the evidence of the Bishop of London, Mr. Neville, Mr. Hadfield, Mr. J. Hodgson, and Mr. Mathews, for proofs of the injurious and unwise stringency of the operation of the law; and to that of the Rev. Thomas Sherborne, Mr. Gibson, and Mr. Jelf, of the power which exists of evading its restrictions, supposing testators are determined to do so.

"In conclusion, although your committee

do not feel authorized by the terms of reference, to report in favour of any specific alterations of the laws of mortmain, they feel bound to state, from an attentive consideration of the evidence submitted to them by witnesses whose means of information and authority must be held to be great, that the operation of the laws is most unsatisfactory, leads to doubt, expense, uncertainty and litigation, and frequently defeats good and pious purposes, which the present aspect of the country would induce all men to wish fulfilled; while from the existing facilities for evasion, they cannot be regarded as serving the main purpose for which they are supposed to be maintained, by securing the heir from the unexpected alienation of property to which he might reasonably have hoped to succeed."

## LECTURES AT THE INCORPORATED LAW SOCIETY.

TRANSFER OF PROPERTY ACT, 7 & 8 VICT.  
C. 76:

Mr. Cayley Shadwell resumed the subject of his lectures on the 15th November, and proceeded to remark on the Transfer of Property Act, by the 13th section of which it was enacted, That the act shall commence and take effect from the 31st of December, 1844, and shall not extend to any deed, act, or thing executed or done, or (except so far as regards the provisions hereinbefore contained as to existing contingent remainders) to any estate, right, or interest created before the 1st of January, 1845.

He had not the least doubt that the meaning of the legislature was, that as the act contained many provisions as to conveyance, and also some provisions altering the qualities of estates irrespective of conveyance, *reddendo singulis singulis*, the words "shall not extend to any deed executed" were to suspend the operation of the act as to any conveyance to take effect under it, and that the words "shall not extend to any estate created" were to suspend the operation of the act only as to provisions which altered the qualities of estates irrespective of conveyance, and that those words were not intended to apply to or have any operation at all upon an estate to be conveyed by a deed operating under the statute.

That, he had no doubt, was the meaning of the legislature; and that, he had no doubt, would be the decision of a court, if the question ever came, as was not unlikely, to be discussed in one.

The language was, however, obscure; and though not the true construction, it might be contended that that suspending clause not only forbade any deed to take effect under the act previous to the 1st of January, but also forbade any deed to convey under the act any estate in land which was in existence previous to the 1st of January next.

He would take the case of an estate for lives granted by a lease ten years old;—how, it

might be asked, could it be said that such an estate was not an estate created before the first of January next? And as the statute says the act shall not extend to any estate created before that day, how could it be asserted that such an estate can be conveyed by a deed operating under the act? He thought he had given the true solution, that in the suspending clause the words "or to any estate, right, or interest created before the 1st of January, 1845," do not relate to matters of conveyance at all; but still, until the question was settled either by the decision of a court or by a general concurrence of professional opinion, he thought it would be wiser to adhere to the present practice of referring to the stat., 4 Vict. c. 21.

The 2nd section enacts, "That every person may convey by any deed, without livery of seisin, or enrolment, or a prior lease, all such freehold land as he might before the passing of this act have conveyed by lease and release."

Livery of seisin was one of the incidents which hitherto had been necessary to give effect to a conveyance by feoffment. The particular use of the conveyance by feoffment arose from the different degree of efficacy which the law attributed to a feoffment, which it called a conveyance operating by right or by wrong, from what it attributed to those conveyances which it called innocent conveyances, or conveyances that operated by right only, and not by wrong, the most used of which was the lease and release. To give an instance of this difference: If a tenant for life conveyed the estate by lease and release (the innocent conveyance) to a stranger and his heirs, the stranger, notwithstanding the limitation to him and his heirs, took the estate only during the life of the tenant for life; the remainder-man was not considered to be disseised, and the conveyance did not work any forfeiture of the estate of the tenant for life, so as to give a remainder-man a right of entry. But the contrary of all this was the case if the tenant for life conveyed to the stranger and his heirs by feoffment and livery of seisin, which was the conveyance by right or by wrong, sometimes called the tortious conveyance. The stranger, by virtue of the limitation to him and his heirs, took an entirely new estate to himself in fee simple, and if he was not disturbed in his possession for a sufficient length of time, (the twenty years) he gained a title against the remainder-men and all the world. The feoffment operated as a forfeiture of the estate for life, which gave the man next in remainder, if there was one in existence, an immediate right of entry, and it disseised the remainder-men in existence and turned their vested estates in remainder into mere rights of entry.

It was however from its effect upon contingent remainders that the feoffment was more usually employed in conveyancing. If at the instant of the determination of an estate for life, (commonly called the particular estate,) the contingent remainder expectant upon it was not ready to come into possession, from

the contingent remainder-man not being in existence or from other reasons, the contingent estate was lost and gone, and incapable of being revived. Thus, to take an instance: if an estate was given to an unmarried man for life, remainder to his first and other sons successively in tail, remainder to himself in fee, and between his estate for life and the remainders in tail to his unborn sons, which were of course contingent remainders, there happened not to be (as in a well drawn instrument there always is) a limitation to trustees upon trust to preserve contingent remainders: in this state of affairs the tenant for life would have it in his power to defeat the remainders to his sons in tail, and gain the absolute mastery over the estate; and this, under the law as it stood previous to the passing of this act, he would have effected by a feoffment with livery of seisin.

He would have conveyed the estate by feoffment to a stranger and his heirs, to the use of himself, his heirs, and assigns, and that conveyance would have been a forfeiture of his life estate, and the entire destruction of the contingent remainders to his sons. Now, however, by one of the subsequent clauses of this act, (the 7th section) the feoffment is deprived of its peculiar efficacy, it being enacted, that no conveyance shall operate by wrong, or have a greater effect than a release; and by another section, (the 8th) contingent remainders are dealt with in such a way as to preserve those interested in them from being damaged. The distinctive character of feoffment, then, being destroyed, as a common form of conveyancing, it would drop into disuse; and its power being gone, its accompaniments of circumstances the livery and the taking of seisin go with it.

Feoffment and livery of seisin were, in small transactions, not unfrequently used in the country as the cheapest mode of conveyance, as saving thereby the stamp of the lease for a year. This practice might of course go on unaffected by the act; but the act could not (if a saving of the stamp be the object) be made use of to dispense with livery of seisin, for the proviso at the end of the 2nd section is, "that every such deed (that is, every deed taking effect under the act) shall be chargeable with the same stamp duty as would have been chargeable if such conveyance had been made by lease and release."

This second section also did away with the necessity of enrolment, but this part of it could not have much operation on ordinary deeds; for the two instances in which, ordinarily speaking, enrolment is requisite, are not within the act. 1st. There is the Queen's grant, which by a rule of common law can only be by matter of Record, and therefore usually made by charter

\* In a future lecture, Mr. Shadwell refers to a doubt as to the validity of a release under the act as a conveyance from a corporation, in lieu of their present mode of conveying by feoffment and livery.

or letters patent under the great seal, enrolled, *Cruise's Digest*, vol. v. p. 37, title 34, King's Grant; but by another rule of law the Queen is not bound by an act of parliament unless specially named in it, and her Majesty is not named in this act, therefore Queen's grants require enrolment as they did before.

And secondly, there are disentailing deeds which, under the 3 & 4 W. 4, c. 74, the Fines and Recoveries Act, s. 41, are required to be enrolled in the High Court of Chancery within six calendar months after the execution thereof; but these disentailing deeds are expressly excepted out of the operation of our act, by a declaration near the end of the fifth section—"That no deed shall by force of this act bar or enlarge any estate tail."

The lecturer then passed to the consideration of the third section, which is as follows:—

"That no partition or exchange, or assignment of any freehold or leasehold land, shall be valid at law, unless the same shall be made by deed"

To this section he had not heard any objection made, nor had any such occurred to him. Partition or exchange or assignment otherwise than by deed, was what was now in practice never heard of; this section, therefore, had the laudable object of accommodating the law to the practice, and prohibiting modes of procedure which had fallen into complete disuse. On the ancient modes of effecting partition, he referred to a very learned note to Hargrave and Butler's *Coke Littleton*, 18th edition, vol. ii. p. 169 a, note 2. With respect to the modern method of making a compulsory partition by filing a bill in equity, praying for a partition on which a commission is issued to various persons to make the partition, the decree when made is binding indeed on the parties, but can be carried into effect only by a deed.

As to the old methods of exchange, he referred to vol. i. of the same book, p. 50 a, *Littleton's Tenures*, sec. 62 to 65; my Lord Coke's *Commentaries*, and Hargrave's notes. The 29 Charles 2, c. 3, the Statute of Frauds, made a writing (not a deed) but a writing necessary for an exchange, if it was of freeholds or of terms for years being more than three. But to make this sort of exchange valid many particulars were requisite; the principal of which were, that the estates given and taken were of equal quality: Estates in fee with estates in fee, terms of years with terms of years, and so on, and that the words exchange or to exchange are in law Latin *excambium* or *excambio* were made use of. The present forms are conveyances by way of exchange, which are exactly similar in operation to the common deeds of conveyance from a vendor to a purchaser, the consideration to the granting party in each deed being the conveyance, which in the other deed has been made to himself.

With respect to assignments of leaseholds and other chattel interests in lands, previous to the Statute of Frauds, all such interests were assignable by parol, and the only restriction upon such assignments being imposed by that

statute, which only required the same to be signed by the party making such assignment, it follows that such assignment, if made in writing, was, previous to the present act, valid without deed. The section of the Statute of Frauds upon which that depends is the 3rd; it enacts, "That no leases, estates, or interests, either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall at any time after the said 24th day of June, be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents, thereunto lawfully authorised by writing or by act and operation of law."

The fourth section of the act was occupied principally with settling, or at least attempting to settle, a great practical difficulty in that important branch of law, the law of landlord and tenant.

Whoever had been much in the habit of seeing the writings entered into between landlord and tenant, and that often in the most informal style and without any professional assistance, must be aware of the great difficulty there often is in collecting from such papers whether it was the intention of parties that such papers should operate as *present* leases, or as agreements for *future* leases, and that difficulty he will find increased if he has looked into the cases on the subject, and seen what slight distinctions are taken in some of them, and how conflicting, not to say contradictory, they are.

The section (the 4th) which endeavours to remove these difficulties, by defining accurately what henceforth shall be a lease, and what an agreement merely, is as follows:—

"That no lease in writing of any freehold, copyhold, or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid as a lease or surrender, unless the same shall be made by deed; but any agreement in writing to let or to surrender any such land shall be valid and take effect as an agreement to execute a lease or surrender. And the person who shall be in the possession of the land in pursuance of any agreement to let, may, from payment of rent or other circumstances, be construed to be a tenant from 'year to year.'"

In commenting on this clause, Mr. Shadwell referred to the confused state of the law on this subject, of what is a lease and what is only an agreement for a lease.

The only general rule which could at all be safely laid down was, that it must depend upon the intention of the parties, as it is to be collected from the instrument. *Morgan v. Dowding v. Bissell*, 3 Taunton 63; *S. P. Doe v. Jackson v. Ashburner*, 5 Term Rep. 163.

The general feeling of the courts has latterly been, to construe instruments of this description as leases, if possible, and not as agreements for demise merely.



After citing various authorities on this part of the lecture, and referring to Woodfall's *Law of Landlord and Tenant*, by Harrison, 2nd ed. vol. 1, p. 118, Mr. Shadwell noticed the cases in which these irregular papers had been held to be present leases, and other cases in which the contrary conclusion was come to.<sup>b</sup>

There were cases on both sides, he said, which he must confess he did not possess sufficient ingenuity to reconcile each with another. Here then was a real practical difficulty which it was worthy of the legislature to endeavour to grapple with; and the plain simple rule laid down by the act, that no instrument shall be taken to be a lease, unless it be by deed, must be owned to be a great improvement upon the former confusion. Perhaps it would be asked, as an agreement for a lease was a lease in equity, what was the mighty difference between an agreement and a lease, that there has been so much litigation about it? It was sometimes the landlord and sometimes the tenant that wished to make out the imperfect instrument a lease. A frequent landlord's reason for wishing to make it out a lease was, that under an agreement he could not in some cases distrain for his rent, but would be driven to his action for use and occupancy. A tenant's reasons for wishing to make such a paper out to be a lease, might be his fear that the landlord, were it only an agreement, might exercise his legal right and so drive him to come into a court of equity, where he perhaps could not get his lease except upon less advantageous terms.

But to return to the statute. The 4th section said, No lease *in writing* and no *surrender in writing* should be valid as a lease or surrender unless made by deed. The lease by parol for not more than three years, where the rent reserved were not less than two-thirds of the improved value, which by the 2nd section of the Statute of Frauds, was excepted out of the operation of that statute, is left by the new act as it was; it was to be observed also, that the new act dealing only with surrenders *in writing* did not interfere with the surrender of a lease by the acceptance of a new lease, which was the course almost invariably pursued on a renewal of leases held under a tenant's right of renewal, or with the surrender of a lease by circumstances as in the case of a bankrupt tenant, whose assignees decline continuing the lease. In such a case, to avoid expense, the bankrupt usually surrenders to the landlord by giving him up the lease and the key of the premises, and with this case also the new act did not interfere.

On this subject of the Transfer of Property Act, a correspondent (M. W.) writes thus:—

"Will not a transposition of the words before the 1st of January, 1845, in section 13,

so as to follow the words *shall not*, set the matter right? The comma after the word *created* seems to warrant this construction."

## OBJECTIONS TO COURTS OF REQUEST.

To the Editor of the *Legal Observer*.

SIR,—I am one of those persons who conscientiously consider that the same principles of justice which regulate the recovery of a debt of a hundred pounds, ought also to extend to cases where the debt may be only half as many shillings; and consequently, so considering, I cannot admire the provisions of any statute establishing these Courts of Request.

It is my lot to reside in the vicinity of one of these courts, and I have for several years been not an uninterested spectator of its proceedings. From the great number of *causes* which have been *tried*, (I beg pardon, I mean *heard*), since its establishment, one might be inclined to suppose that its proceedings were beneficial; but the true reason appears to lie in the decisions of the court, which, being *almost invariably for the plaintiff*, act naturally as an encouragement to parties to institute their proceedings there.

One section of the act constituting this court takes away the privilege of attorneys; the consequence of which is, that (as few attorneys will practise there for clients, neither will they attend on their own account,) the debt and costs are paid, to prevent the necessity of the disagreeable alternative of appearing in this "twitch court" (as it is somewhat expressively designated) as a defendant.

Another section enacts "that no summonses, orders, judgments, or other proceedings of the said court, shall be removed or removeable to any other court by writ of certiorari or otherwise, *except as hereinafter directed*;" the substance of this direction appearing, by the next section, to be, that any defendant sued for a debt *exceeding five pounds*, may have such debt determined by one of the superior courts, on his taking out a summons before a judge of such superior court, to show cause why the action in the Court of Requests may not be discontinued; *but this must be done before the hearing*; and should twenty adjournments take place after the cause has been once before the inferior court, and notwithstanding that the most complicated questions of law and fact may arise which were never dreamt of by either plaintiff or defendant before the hearing, no removal of the cause can take place. Some of your readers, however, may suppose that this evil can be remedied by application to a superior court, after judgment in the inferior one; but the language of the second section I have quoted forbids the supposition.

On the back of a summons issued out of this court is endorsed a notice to the defendant, that if he intends to dispute the plaintiff's claim by any *set-off*, the *Statute of Limitations*, *Bank-*

<sup>b</sup> We omit the report of this and other parts of the lecture, which do not immediately bear on the construction of the act.

reply, or a discharge under the Insolvent Debtors' Act, he must give notice of such his intention to the under steward of the court, or his deputy, five days before the day of hearing, if the plaintiff's claim does not exceed five pounds, and ten days before, if the claim exceeds that sum. How many poor, ignorant people may be served with process of this description, to whom the words *set-off, Statute of Limitations, &c.* are entirely mysterious!

A further section provides that, on five days' notice to the under steward, a jury may be summoned, in any cause or action where the debt sought to be recovered exceeds five pounds, consisting of *not less than three, nor more than five men, at the discretion of the judge*; while the second section after this is *so very appropriate*, that I cannot resist the temptation of giving it, *verbatim et literatim*:—

"And be it further enacted, That it shall be lawful for the steward of the court, or his deputy, to arrest any judgment given in any cause in the said court, or to set aside the verdict of any jury, or to revoke any other order or decision of the court, or to stay or set aside any execution or other process issuing out of the same court, as it may seem just and equitable or expedient to such steward or his deputy, who shall in any such case have power and authority in his discretion to make any order as to the payment of costs by, or to impose any other terms upon, either of the parties in the cause or action, as a condition for arresting, setting aside, or revoking any such judgment, verdict, order, decision, execution, or other process as aforesaid"!

I make no comment upon this section, as I think its merits must be evident to every person who reads it.

Our legislators seem to have considered that the same principle of right and wrong which exists in a case where a larger debt is claimed cannot exist in any case where the debt is not to the amount of five pounds, or they would not surely have withheld the privilege of removing a cause or impanelling a jury.

I trust that, before long, some steps will be taken to relieve the country from these courts. If local courts are wanted, why not extend the jurisdictions of the County Courts; in which, after an action has arrived at an issue, through the several stages of pleading, it can be presented to a jury for determination. Some may suppose the new system to be much cheaper: I do not think it is; but if such even were the case, I am of opinion that the *cheap law* is very likely to produce *dear injustice*.

Z.

Leeds, 4 Dec.

## THE METROPOLITAN BUILDING ACT.

7 &amp; 8 VICT. c. 84.

To the Editor of the Legal Observer.

SIR.—As the above very important statute is to come into operation on the 1st day of

January next, I felt, in common, no doubt, with my professional brethren of the metropolis, no small anxiety to acquaint myself with its provisions. Judge, however, my surprise on reading the act, to perceive that its application as far as regards the north side of the Thames, was restricted to the parishes of Fulham, Hammersmith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, St. Pancras, Islington, Stoke Newington, Hackney, Stratford-le-Bow, Bromley, Poplar, and Shadwell, and in addition a small part of Chelsea. In this enumeration, the very populous parishes of St. Matthew Bethnal Green, Shoreditch, and St. Luke's, not to mention our great city, are omitted. Now, whatever indulgence the small-building speculators of Bethnal Green and Shoreditch (and they are not a few) may esteem this omission to be, I cannot but regret that such a very large tract of ground, the building on which so especially needs statutory regulation, should be left still to the enjoyment of its narrow alleys, underground dwellings, undisturbed filth, and continued propagation of pestilential miasmata.

Possibly some of your readers may imagine I am indulging a joke at the expense of legislation, but I assure you I consider it a very serious matter, and whether I am correct in my view of the statute will best appear by a reference to the part to which I am alluding, namely, the 3rd section, which is as follows:—

"And be it enacted, with regard to this act generally, so far as relates to the operation thereof in reference to localities, that the operation of this act shall extend to all places *within* the following limits: that is to say, To all such places lying on the north side or left bank of the river Thames, as are *within* the exterior boundaries of the parishes of Fulham, Hammersmith," &c. &c.

It is quite clear that the limits assigned by the act are, "*places within the exterior boundaries of the several specified parishes,*" and it only remains to ascertain the precise meaning of the term "*exterior boundaries.*" The addition of the word "*exterior,*" affords no elucidation as to any particular boundary in the relation of north or south, and only leaves the expression to indicate in its ordinary sense, the outside line of the parish. The term "*boundary*" is not limited to any portion of the outside line, and must therefore be taken to include the whole boundary; and the only conclusion at which I conceive it is reasonable in anything like a common sense reading of the section to arrive, is, that the operation of the act extends only to such places as are strictly within the outside lines of the respective parishes enumerated; and that it is not possible, by any torture of the terms employed, to make the operation of the act extend to any parishes but those named.

It may perhaps be urged that I have taken the words of the section in an unfairly literal sense, and that the scope and intention of the statute should be regarded in construing its meaning. It must, however, be borne in mind,

that in very many respects the "Metropolitan Building Act" is a penal statute, and will admit of nothing but a perfectly legal construction.

The surest test which can be applied to the argument I have advanced, is to consider hypothetically that the act was intended to apply solely to the parishes enumerated, and in this view I would ask, what terms could have been used which would have more effectually confined the operation of the act to such places as are within the boundaries of the respective parishes mentioned, than those which are to be found in the section referred to? How any place not within such respective boundaries is to be included, I confess I am at a loss to conceive. The expression "lying on the north side of the Thames," affords no solution of the

difficulty, because if it is available for anything, it will as well include parts beyond the parishes as parts within; and this general designation is limited by the words "such places as are *within* the boundaries."

If I am correct, the inquiry which naturally arises is, where is the remedy? The fourth section gives power for extension of the limits by an order in council, but there must exist both an increase in population and building speculation with a view to evade the act, before such power is to be exercised.

If I am in error, I shall be most ready to give candid attention to any observations which this hasty communication may call forth from your correspondents.

Dec., 1844.

### CANDIDATES WHO PASSED THE EXAMINATION.

MICHAELMAS TERM, 1844.

[Concluded from p. 130, *ante*.]

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Hinde, William . . . .	William Pritt, Liverpool
Hodgkin, Christopher . . . .	John Postlethwaite Myers, Broughton-in-Furness, Co. Lancaster
Hodgson, Edward . . . .	Thomas Hodgson, Castlegate
Holden, Wyld Ashton . . . .	John Yend Bedford, William Spencer, and W. Spencer, Birmingham.
Hunt, Benjamin . . . .	James Platt, 11, New Boswell Court, Lincoln's Inn George Hall, 11, New Boswell Court
Irving, James Corbet . . . .	David Graham Johnstone, 42, Lothbury
Jones, William Stephens . . . .	Thomas Chubb, Malmesbury.
Kirlew, Daniel . . . .	Henry Maltby, 34, Old Broad Street
King, Charles Stafford . . . .	Charles Reeves, Furnival's Inn, Holborn Cyrus Jay, 15, Serjeant's Inn, Fleet Street
Lamplough, Robert Elliott . . . .	Henry Smithson, New Malton Charles Smithson, New Malton
Langley, Robert Francis . . . .	John Henry Langley, Cardiff
Lee, Charles Marsh . . . .	Matthias Thomas Hodding, Salisbury
Lee, Edward Alphonso . . . .	John Cressey Richardson, Kingston-upon-Hull
Lewis, Frederick Augustus . . . .	Hugh Lewis, 22, Artillery Place West, Bunhill Row Michael Lewis, 16, Wilmington Square, Clerkenwell
Luscombe, John Teed . . . .	Joseph Elliott Square, Plymouth
Mackenzie, John Henry . . . .	John Chappell Tozer, Teignmouth
Manners, William . . . .	Robert Henry Johnson, Grantham
Matthews, Benjamin . . . .	Edwin Tilsley, Moreton-in-Marsh
Milner, Christian Splidt . . . .	William Richard Bishop, Exeter
Milnes, Robert . . . .	Charles Harrison Clarke and Henry Wells, Nottingham Charles Harrison Clarke
Mingaye, William Robert . . . .	Robert Crabtree, Halesworth, Co. Suffolk John Crabtree, Halesworth John Meadows White, 35, Lincoln's Inn Fds. John Wood, Woodbridge
Mules, Horace Vibart . . . .	Philip Mules, Honiton
Neate, Henry . . . .	William Tanner, Devizes, Wilts Henry Parker, Gray's Inn
Nicholl, Charles Iltid . . . .	Creasy Ewens, 6, Basinghall Street
Nixon, Charles . . . .	George Rawson, Nottingham

Paine, William Stephen . . . .	William Stevens, (deceased) Frederick's Place, Old Jewry
Palmer, George . . . .	Thomas Frederick Maples, Frederick's Place
Partridge, William . . . .	John Richardson, Burton-upon-Trent
Pearse, Peter John Thomas, the younger . . . .	James Partridge, Tiverton
	Peter John Thos. Pearse, the elder, Frederick's Place
Pemberton, Charles . . . .	John Carnthwaite, 11, Cable Street, Liverpool
Pennington, James Masterson . . . .	Richard Armistead, Whitehaven
	Charles Bevan, Bristol
Philbrick, George Edward . . . .	Frederick Bloomfield Philbrick, Colchester
Plummer, Stephen, the younger . . . .	Stephen Plummer, the elder, Canterbury
	William Henry Cullen, 29, Bloomsbury Sqr.
Poole, Richard . . . .	Robert Gamlen, Gray's Inn
Randles, Edward . . . .	William Robinson, Dudley
	J. W. Freshfield, the younger, 5, New Bank Buildings
Raven, Samuel, the younger . . . .	Rowland Wilks, (deceased) Finsbury Place
	David Morrice Johnson, 64, Moorgate St.
Rawlins, David Archibald Dixon . . . .	Samuel Munkley South, Market Harborough
	Thomas Ingram, Leicester, (deceased)
	Thomas Ingram, (the son,) Leicester and Market Harborough
Roberts, William Henry . . . .	John Freame Ranney, Great Yarmouth
	James Denew Waters, Great Yarmouth
Rowland, William Henry . . . .	William Rowland, Ramsbury
Salmon, George . . . .	William Wise, Rugby
	Frederick Dowding, Bath
Serjeant, William Pye . . . .	Charles Cobley Whiteford, Plymouth
Shaw, George John . . . .	Rowland Yallop, the elder, 8, Furnival's Inn
Shekell, John Hilton . . . .	Edm. Wells Oldaker, Pershore, Co. Worcester
Shugar, John Merritt . . . .	Henry Faithfull, Brighton
Silver, John . . . .	John Hawkins, 2, New Boswell Court, Lincoln's Inn
Simpson, Reuben . . . .	John Goodeve, 1, Raymond Buildings, Gray's Inn
Simpson Richard . . . .	William Slater, Manchester
Simpson, Thomas . . . .	William Trotter, Bishop Auckland
Sisson, Robert James . . . .	David Williams, formerly of Pwllheli, now of Postnadoc, Co. Carnarvon
	William Wybergh How, Shrewsbury
Smith, Robert Edwin . . . .	Thomas Thorpe, Alnwick
Smith, William, the younger . . . .	Robert Rogers, Sheffield
	Thomas William Rogers, Sheffield
Smithson, Alfred . . . .	Charles Smithson, (deceased,) 23, Southampton Buildings, Chancery Lane
	Thomas Mitton, Southampton Buildings
Soames, Charles . . . .	Thomas Butts Tanqueray, 35, New Broad St.
Stevenson, George . . . .	Richard Toller, Leicester
Sudlow, John, the younger . . . .	James Crossley, Manchester
Surtees, Alfred Wright . . . .	Michael Clayton, 6, New Sqr., Lincoln's Inn
Thomas, Edmund . . . .	Archibald Cameron, Worcester
Thompson, Frederick . . . .	Frederick Elijah Thompson, 3, Raymond Buildings
Tindal, Arthur . . . .	Watkinson Tindal, Huddersfield
Turner, George . . . .	William Hughes, 35, Northampton Square Clerkenwell
Vincent, George Godby . . . .	Thomas Randall, Castle Street, Holborn
Walter, Arthur Antoine . . . .	Arthur Walter, Woodford, Co. Northampton
	Wm Lockwood Howell, Ratcliff Highway
Webb, Henry . . . .	Robert Hinde, Milton
	John Hinde, Milton
Weg, Robert Arundel . . . .	Abram Lindow Rawlinson, Chipping Norton
Wood, John Richard . . . .	John Wood, the younger, Woodbridge
Wortham, Hale . . . .	Thomas Wortham, Royston

## METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

WE have received a statement of the rules, regulations and proceedings, passed at the general meeting of the members held on the 30th of October. We have already noticed the meeting; and the names of the president, vice-presidents, auditors, and council of inquiry and direction have been advertised.

The design of the society and its mode of proceeding are somewhat altered from its original announcement by the interim committee, and we extract the following for the information of our readers:—

That this association be styled the "Metropolitan and Provincial Legal Association," and shall consist of duly qualified attorneys and solicitors, and writers to the signet, throughout the United Kingdom, who may be desirous of joining the same.

That in future no person shall be admitted a member but on the written recommendation of two members, according to the form to be supplied, on application, by the secretary.

That the objects of the association be as follows:—

1. To promote and support the general interests of the profession.
2. To prosecute (if necessary) all unqualified persons who may usurp either the duties or privileges of the profession.
3. To originate and assist in obtaining all useful and practical reforms and amendments of the law.
4. To expose, and (if possible), punish all persons guilty of any acts of malpractice, whether they be members of the bar, attorneys, or solicitors.
5. To maintain the respectability of the profession by an honorable and liberal mode of practice.
6. To adopt measures for obtaining a co-operation with all law societies, (provincial or local,) having similar objects in view.

That this association be supported by annual subscriptions of one guinea from each member, to be paid in advance, and which shall entitle each subscriber so qualified as aforesaid to be entered and continued on the roll of the association, as a member thereof, for the current year.

That the year of the association shall be considered as commencing on the first day of Michaelmas Term in every year.

That no further liability shall be incurred by any member of the association beyond the said annual subscription of one guinea, except by his consent.

That the association shall be governed and conducted by a president, three vice-presidents, (who shall be trustees for the time being), a council of inquiry and direction, consisting of 24 members, of whom 12 shall be selected from the London members, and 12 from the coun-

try members—three auditors and a secretary, all of whom shall perform their respective duties gratuitously, except the secretary.

That the council shall have power to add to their number not exceeding ten members; and also when twelve in number are present, (at the least,) to decline to receive, or return the subscription of any party.

That the president, or one of the vice-presidents, shall, if present, preside at every special or general meeting of the members of the association, and at every meeting of the council, of which they shall be members *ex officio*, and five in number of the said council, shall form a quorum for business and working purposes.

That all questions and matters connected with the working of the association, and the expenditure of its funds, shall be submitted and left wholly to the discretion and control of the council.

That the auditors shall examine the accounts of the association every three months, and make their report on the same.

That the accounts, books, and vouchers of the receipts and expenditure of the funds of this association, shall be open at all times for the examination and inspection of any member, and the secretary shall, upon a written request signed by any ten members of the association, call a special meeting of the council, for any purpose connected with the objects of the association, to be specified in such request.

That every matter, question, and resolution submitted at any special or general meeting, or at any meeting of the council, shall be carried by a bare majority of votes.

That the members of the association who are unable to attend personally, shall be allowed to vote by proxy, but no member shall hold more than ten proxies.

That in case of an equality of votes, the chairman shall have a second or casting vote.

That a general annual meeting of the members of the association shall be held during Michaelmas Term, and at which meeting, all the officers shall be elected and chosen for the year ensuing.

That every member of the association shall use his utmost influence and endeavours to support and carry out the purposes and objects of the association, and that all cases requiring the notice or interference of the association, shall be reported to the secretary, in writing, to be by him laid before the council.

We have not heard of any proceedings of this society, except the preparation of a petition for the better accommodation of practitioners attending the Court of Bankruptcy, and except a meeting occasioned by the improper conduct of the secretary. We adverted to the subject at p. 67, *ante*, under the head of "Canvassing for Professional Business." A new secretary has been appointed, and the place of business removed from Bedford Row to Bridge Street Blackfriars.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

PRACTICE.—DEPOSITIONS.—COMMISSIONER.  
—IRREGULARITY.

*Depositions taken under a commission sued out by the plaintiff alone, were suppressed after publication, on the ground that one of the commissioners was the nephew and agent of the plaintiff, although the application to suppress was not made until after the witness was dead, the defendant not having previously known the connexion between the plaintiff and commissioner.*

THIS was a motion to discharge an order of the Master of the Rolls, suppressing depositions after publication, on the ground that one of the commissioners who took them was nephew and agent of the plaintiff in the cause. The commission was taken out by the plaintiff in January 1841, the defendant not joining in it, and was executed, in France, by two commissioners of the plaintiff's nomination, in March, and publication having passed, the depositions were delivered out in December the same year. In January 1842, the defendant took objections to the evidence on other grounds, but being unsuccessful, the matter proceeded in the Master's office. It was not until the 15th of December, 1842, when the Master was about to settle his report, that the defendant discovered that *Cymric Lloyd*, one of the commissioners, was the nephew and agent of the plaintiff. In a week after that discovery, the defendant gave notice of a motion before the Master of the Rolls to suppress the depositions, and the Master of the Rolls, after hearing that motion, in 1843, made the order now appealed against. (See 6 Beav. 135.)

Mr. Bethell and Mr. Craig for the plaintiff.  
—There was no imputation of partiality against the commissioners, yet the sole ground on which the Master of the Rolls suppressed the evidence, was the fear of partiality from the connexion between the plaintiff and one of the commissioners. The defendant did not take this objection till a year after publication of the depositions. He could not but have known the relation in which the commissioner stood to the plaintiff. It was not until after other objections failed that this was brought forward. Burdekin, a former defendant, whom the defendant Spencer succeeded as officer of the Bank of Manchester, had been furnished with the names of the commissioners, and he or his solicitor ought then to have objected. The plaintiff's case depended entirely on this evidence, and he would be without remedy if the order to suppress should be maintained, as the witness was now dead. It was the duty of the defendant or his solicitor to inquire into the character of the commissioners, and to make

his objections to the depositions before publication. Lord Eldon refused to suppress depositions taken under similar circumstances, in *Gordon v. Gordon*, 1 Swanst. 166, 1 Wils. 155.

Mr. Kindersley and Mr. Teed supported the order of the Master of the Rolls, and referred to the Practical Register, p. 121; Hinde's Practice, p. 304; and the case of *Cooke v. Wilson*, 4 Madd. 380.

The Lord Chancellor said he would inquire into the practice in the common law courts. The case accordingly stood over for consideration.

The Lord Chancellor, now giving judgment, having first stated some of the facts, said, it had been proved that *Cymric Lloyd*, one of the commissioners appointed to take the depositions, was the nephew of the plaintiff, and it appeared that he also acted as his agent, and had been so engaged in various transactions of importance. These facts had been positively sworn to on the part of the defendant, and were not contradicted on the part of the plaintiff, or any information given of the nature or extent of the agency. It was highly irregular to put the name of *Cymric Lloyd* among the commissioners to take evidence, and have allowed him to act in that capacity. If the plaintiff sustained any loss or inconvenience from the act, it must be ascribed solely to the course he thus adopted. It was most important that the rules of the court with respect to the taking of evidence under a commission should be strictly enforced, not merely on the ground of impartiality in the taking of such evidence, but to secure the degree of secrecy essential to such proceedings. The irregularity, too, was the more objectionable, because those proceedings appear to have been purely *ex parte*, the defendant not having joined in the commission. It was clear, therefore, that unless the defendant had been guilty of some act which would prejudice his case, or of some culpable delay in taking his objection to the evidence, the proceeding could not be supported. Now it appeared that the commission was executed in March, and the depositions returned to the Master towards the end of 1841. They were under discussion before the Master in 1842, and in Dec. of that year this objection was made. The defendant, in his affidavit, said that he had occasion to meet Mr. *Cymric Lloyd* on the 15th of December in that year, with respect to a promissory note of the Hon. Mr. Mostyn, and that, looking afterwards at the depositions of the witness Pugh, to which the name of *Cymric Lloyd* was signed as commissioner, he felt some suspicion that it might be the same person; and having written to his solicitor in the country, he then heard, for the first time, that *Cymric Lloyd* the commissioner was the nephew, as well as the agent, of the plaintiff. No delay took place in making the objection to the evidence; for on the 24th of December the defendant stated that the whole proceeding had been irregular, and served a notice of motion on the plaintiff to set it aside. No delay therefore took place, for it appeared that

the defendant proceeded as promptly as possible to take steps for getting rid of the depositions.

Some reliance had been placed, in the course of the argument, on the fact that these depositions had been used in the progress of the cause, but it appeared that although used, no effect had been given to them, as the matter still remained in the Master's office, waiting the result of the motion. No report had been made, and therefore there was no force in the objection.

His Lordship concurred with the Master of the Rolls in the expression of regret that the plaintiff had been deprived of the evidence of Pugh, by his death since the execution of the commission, but it was of the utmost importance to the due administration of justice that the plaintiff should not be permitted to avail himself of the irregularity produced solely by his own default, and the appeal must therefore be dismissed, with costs.

*Lord Mostyn v. Spencer*, Nov. 7, 1844.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### MORTGAGOR AND MORTGAGEE. — EXCEPTIONS TO REPORT.

*In a suit to redeem a mortgage, the decree directed a reference to the Master, to take an account of what was due to the defendant on the mortgage in the pleadings mentioned, and also an account of the rents and profits of the mortgaged premises received by the defendant, or by any person by his order, or for his use; and ordered that what should be coming on the account of the said rents and profits should be applied, in the first place, in payment of the interest, and then in sinking the principal of the mortgage. The mortgage was given to the defendant's father, who had been in possession many years before his death; and it appeared upon the face of the report, that if an occupation rent were fixed, the mortgage would have been satisfied before his death. The Master, however, had calculated the amount due for principal and interest from the date of the mortgage, without making any deduction, except for a small sum received by the defendant for rent, and had found the balance, after making such deduction, still due. Held, that the decree not directing any accounts of rents and profits during the father's life, the Master's finding was correct.*

THIS cause came on upon exceptions to the Master's report, made in pursuance of the above-mentioned decree, by which he had found that there was due to the defendant, for principal on the mortgage in the pleadings mentioned, 99l. 12s. 8d., and for interest, 326l. 9s. 4d., making together 426l. 2s., but that the father of the defendant having purchased one

moiety of the mortgaged premises, there was due to the defendant 213l. 1s., being one moiety of the 426l. 2s., and to which being added 159l. 4s. 11d., the taxed costs of the defendant directed to be paid by the decree, they made together the sum of 372l. 5s. 11d., the total amount due for principal, interest, and costs on the said mortgage securities. The Master also stated that he had not taken any account of the rents and profits received by the defendant's father, not being directed to do so by the decree; but he found that the defendant's father entered into possession in March 1781, and continued in receipt of the rents of the mortgaged premises till his death, which happened on the 25th of February, 1817, when the defendant permitted his mother to receive the rents till her death in May 1822, since which the defendant had been in possession and receipt of the rents of the same premises. To this report several exceptions were taken, the effect of which was, that the Master ought not to have found any sum to be due in respect of the mortgage.

*Stuart and Miller* for the plaintiffs, urged that, as the Master had found by his report that the defendant and his father and mother had been in possession of the mortgaged premises ever since the year 1781, being 63 years, and that the mortgaged premises were worth, to be let for 12l. a year, the amount that ought to be allowed against the defendant for rents and profits, was 756l., and consistently with this finding, the Master ought to have reported the mortgage debt and interest to have been long since satisfied, instead of which he had allowed only the sum of 62l. 10s. for rents actually received by the defendant, and from this had deducted 12l. 4s. 1d. for repairs done during the lifetime of the defendant's father, although he submitted that the defendant ought to be charged with 136l. as an occupation rent, in respect of part of the premises in his occupation. The defendant's title was only derivative, and if there was nothing due on the mortgage at the father's death, there could be nothing due to the defendant. They cited *Quarrell v. Bechford*, 1 Mad. 269.

*Wakefield and Randall* contra, insisted that the Master's finding was perfectly in accordance with the decree, and ought not to be disturbed.

The Vice-Chancellor said, it was plain the defendant admitted that no account of rents and profits had been rendered during his father's lifetime; but then the decree directed only an account of rents and profits received by the defendant. As no account of rents and profits received by the defendant's father was directed by the decree, the Master could not properly go into it, neither could the court assume that in directing an account to be taken of rents and profits received by the defendant, it was intended that an account should be taken of rents and profits received by other parties. The exceptions must therefore be overruled.

*Tinslok v. Roby*. Nov. 20, 1844.

**Queen's Bench.**

(Before the Four Judges.)

*[Reported by JOHN HAMMERTON, Esq., Barrister at Law.]***MANDAMUS TO COMMISSIONERS OF TAXES, UNDER 36 GEO. 3, c. 52, s. 37.**

*The executors of a will paid 10l. per cent legacy duty on personal property. The will and probate were afterwards set aside in the Ecclesiastical Court, on the ground that the testator was incapable of making a will. Letters of administration were afterwards granted, and the amount of duty under the administration would be 5l. per cent. The court granted a mandamus to the Commissioners of Taxes, under the statute 36 Geo. 3, c. 52, s. 37, to repay the amount of duty which had been paid, beyond the sum that was properly payable under the letters of administration.*

A RULE nisi was obtained for a mandamus to the Commissioners of Taxes, to show cause why they should not refund the sum of 1,274l. 17s. 9d. The application was made under the 37th section of the statute 36 Geo. 3, c. 52, which directs, that in case letters of administration be made void, and any duty shall have been improperly paid, it shall be repaid; but if it ought to have been paid, it shall be allowed in account with the rightful executor.

A person died possessed of real and personal property. He made a will, and gave his personal property to two persons, and his real property to a third. The will was duly proved, and the legatees, who were strangers in blood to the testator, paid legacy duty at the rate of 10l. per cent. on the personal property. The heir at law afterwards brought an action of ejectment against the devisee under the will, to recover the real estate. The plaintiff in that action obtained a verdict on the ground that the testator at the time of his death was incapable of making a will. The persons entitled to the personal estate then applied to the Ecclesiastical Court, and ultimately the will was set aside, and the probate cancelled. The legatees, together with those who were entitled to the personal estate, took out letters of administration, and finally an arrangement was made with all the parties that an equitable division of the property should be made amongst them. The rule called upon the Commissioners of Taxes to pay over to the administrators the difference between the sum paid them by the legatees under the will and the sum that ought to be paid under the letters of administration.

The Solicitor-General (Sir F. Thesiger) and Mr. Crompton showed cause.

The Commissioners of Taxes have received the money and have paid it over to the treasury; but that is not urged as an argument against repaying this money, if this court should be of opinion that the present applicants are entitled to it. But these applicants do not bring themselves within the provisions of this statute; the commissioners have only

received that amount of duty which under all the circumstances of the case they were entitled to receive. They cannot take notice of the agreement made between these parties.

Mr. Kelly, in support of the rule.

This case must be viewed as if the will had never existed, and that letters of administration had been taken out in the first instance. Under the will, therefore, the legatees paid 10l. per cent. duty on the personal property, because they being strangers in blood to the testator, that was the amount of duty that was legally due. The will and probate are subsequently set aside; then administration is taken out, and an arrangement is made as to the distribution of the property. The amount of duty payable under the letters of administration would only be 5l. per cent., therefore, on a large portion of the estate, 5l. per cent. more duty was paid than could have been legally demanded. This sum ought to be refunded, under the 37th section of the statute, and the fact that an arrangement takes place among the parties as to the final distribution of the property cannot affect the question.

Lord Denman, C. J.—In the absence of fraud or collusion, which is not imputed in this case, it does appear to me that you bring yourself within the terms of the act of parliament.

Williams, Coleridge, and Wightman, Js., concurred.

Rule absolute.

*The Queen v. the Commissioners of Taxes, Michaelmas Term, 1844.*

**Queen's Bench Practice Court.***[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]*

**PRACTICE. — PAYMENT OF AMOUNT OF AWARD. — RULE UNDER 1 & 2 VICT. c. 110, s. 18. — SERVICE OF AWARD. — SERVICE OF RULE NISI.**

*Semble, that before a rule can be granted calling upon a party to pay the amount of an award and allocatur with the view of issuing execution under the 1 & 2 Vict. c. 110, s. 18, there must have been a personal service of the award and allocatur, and a personal demand of the amount; but that under special circumstances such service may be dispensed with.*

*A rule nisi must be served so long before the time for showing cause that the party may have a reasonable time in which to do so; and when a rule was drawn up to show cause on the 20th November, and was not served until that day, a motion to make the rule absolute on the 25th was held premature.*

Best moved for a rule calling upon the defendant to show cause why he should not pay to the plaintiff the amount of an award and allocatur, and stated that the officers of the court had expressed a doubt whether personal service of the award and allocatur, and a



personal demand of the amount, as in the case of an attachment, were not necessary to ground the application. He referred to *Pearson v. Archbold*,<sup>a</sup> which merely showed that before the motion could be granted there must have been some service of the award.

*Patteson, J.*, having taken time to inquire, said, that the Masters of the Common Pleas and Exchequer had established a rule that personal service was in general necessary before such an application could be made, but that under special circumstances such personal service might be dispensed with; and that as such special circumstances appeared in the present case, the plaintiff might have a rule nisi.

Rule nisi.

*Best*, on the 25th November, on moving to make the rule absolute, said, that there was some doubt whether the motion was not made too early, the rule having been drawn up to show cause on Wednesday, the 20th November, and not having been served until that day on the defendant, who was an attorney residing at Birmingham.

*Patteson, J.*—After referring to the case of *Farrell v. Dale*,<sup>b</sup> said that the service was insufficient, and the motion premature, and that the rule must be enlarged.

Rule enlarged accordingly.

*Hawkins v. Benton.* Q. B. P. C. M. T., 1844.

**Exchequer.**

CAPIAS.—NON PROS.

*A defendant in custody under a capias issued by order of a judge, is not entitled to be discharged by reason of the plaintiff not having declared against him within twelve months, but the proper course is to proceed by non pros.*

*Hance* moved for a rule to show cause why the defendant should not be discharged out of the custody of the sheriff of Yorkshire, the plaintiff not having declared against him within a year. It appeared from the affidavits that the defendant was arrested and committed to gaol on the 27th April, 1843, by virtue of a writ of capias, issued by order of a judge; that he was at the same time served with a writ of summons; and that the plaintiff had not taken any further proceedings in the action. He cited the R. H. 2 Wm. 4, reg. 35, which provides that a plaintiff shall be deemed out of court unless he declares within a year after the process is returnable.

*Parke, B.*—Why did not the defendant *non pros* the plaintiff?

*Hance*.—He was not in a situation to do so, as he had not appeared to the action.

*Gurney, B.*—Then he has no right to come to the court now. Having been arrested in pursuance of a judge's order, he cannot be considered in custody on *mesne* process in the ordinary sense.

*Parke, B.*—The proceeding by arrest is now wholly collateral to the action. The defendant

can only procure his discharge by obtaining judgment of *non pros* against the plaintiff.

Rule refused.

*Turner v. Parker*, Michaelmas Term, 15th November, 1844.

## CHANGE OF SOLICITOR IN A CHANCERY SUIT.

By the 18th order of 26th Oct. 1842, a solicitor cannot be changed without an order of court on motion or petition, and which is made as a matter of course.

A question has arisen, whether on the introduction into a firm of a new partner, it is requisite to obtain this order.

We understand the *Master of the Rolls* has decided that, in the case of the addition merely of a new partner, no order is necessary; but where the partnership is dissolved an order must be obtained.

On the other hand, the *Vice-Chancellor of England*, as we are informed, holds that any change whatever, even the introduction of the son of the present solicitor as a partner with his father, renders an order necessary.

Presuming the object of the order to be, (as it is at common law,) to secure the solicitor from being dismissed without notice, we conceive that the rule laid down by the *Master of the Rolls* is the correct one. Where a new partner joins the solicitors, there can be no occasion for notice.

## THE EDITOR'S LETTER BOX.

"A Constant Reader" refers to what Mr. Baron Gurney said of the conduct of the medical coroner in a recent case of manslaughter, reported in the *Times* of the 11th inst. The important office of coroner certainly ought not to be filled by medical men who are unacquainted with the rules of evidence and the proper mode of conducting an inquest.

We have not yet heard further of the bill mentioned by J. S., relating to the abolition of imprisonment for debt; but understand that it is in contemplation immediately on the meeting of parliament to bring in a bill to remedy the defects of the late act, and among other things it will provide, that all *salary* be made liable, as well for future as for past debts.

"A Subscriber" is informed, that a gentleman who was admitted an attorney and solicitor in Michaelmas Term, need not take out his practising certificate *the same year he was admitted*, in order to avoid the necessity of being readmitted when he wishes to practise for himself. The length of time for which he may defer taking out his certificate has not been fixed by the judges, but no readmission is necessary. The increase of duty which is payable after three years will be reckoned from the date of admission, not from the time of taking out the certificate.

The valuable suggestions of A shall be attended to.

A. B.'s question of professional usage shall be inserted.

<sup>a</sup> 12 L. J. N. S. Exch. 230; S. C., 11 M. & W. 109.

<sup>b</sup> 2 D. P. C. 15.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

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SATURDAY, DECEMBER 28, 1844.

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—"Quod magis ad nos  
Pertinet, et nescire malum est, agimus."

HORAT.

**LORD BROUGHAM'S LIFE AND  
CHARACTER OF LORD ABINGER.**

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THERE is a very old adage, which we dare not now repeat in company with the illustration which we are about to give to it; but it may here be presented in the form of "set a lawyer to catch a lawyer." So we should say, "Set an orator to look after an orator." If Pitt had given a summary of the characteristics of Fox; if Demosthenes had reviewed the life and orations of Æschines; if Cicero had given us an article on Cæsar, we should read it, bad or good. We have something of the same feeling in reading an article, in the *Law Review*, on Lord Abinger, which is very generally ascribed to Lord Brougham. If it had been exceedingly dull—if the authorship be true—it would have been worth reading; but it is anything but dull; and although perhaps not equal to his lordship's happiest efforts, we have read it with great interest: and as almost all our contemporaries have noticed it, we think we should not be quite silent as to it.

And here we are disposed to congratulate our readers on the change that has of late taken place in periodical literature, and more especially in legal periodical literature. It is no longer considered beneath the dignity of the eminent and learned part of the profession to amuse and instruct themselves and others by contributing to a periodical; and we congratulate our readers on this alteration in feeling, to which we trust we have somewhat contributed during the last fifteen years, by showing that even a weekly work may be

effectively and respectably conducted with a due regard to the feelings of others.

But first, is this article Lord Brougham's? We are certainly inclined to say, from internal evidence, *not Brougham aut diabolus*. It has all the defects and the merits of his style and manner. It is eloquent, vigorous, and pointed; it is also careless, rhetorical, and occasionally stilted. But although we might mistake the style, we cannot be wrong as to the personal allusions, for much of it is in fact written not so much to defend Lord Abinger as himself; and as we have always endeavoured to preserve impartiality as to Lord Brougham; as we have fully blamed his errors, but allowed his great qualities, we shall gladly quote what he says on this head. The obligations of Lord Abinger to the Whig party are thus summed up and estimated. After stating the long delay that took place in giving him the rank of Queen's Counsel, the writer of the article goes on thus:—

"He happened to be a steady and conscientious Whig; his opinions were early formed, and firmly maintained. He refused all the professional advantages which the intimate personal friendship of Mr. Perceval might have given him. Nor can there be a doubt that but for his party connexions he must have risen to the office of Attorney-General twelve or fifteen years earlier than he held it, and been Chief Justice of England when Lord Ellenborough resigned in 1818. Instead of obtaining such promotion, he was prevented from even having the fair prospect of elevation to rank—almost a matter of course and all but a thing of strict right—because his political adversaries were determined to keep down a very capable Whig and protect less capable Tories. This was to a

certain degree the case with Sir Samuel Romilly; it has since been still more the case with others; and such refusals of rank, though they more directly oppress the individual kept down, yet operate to oppress all who are his seniors at the bar and are not qualified to act as leaders. Mr. Brougham's being refused his rank when the Queen died in 1821, threw ten or twelve of his seniors out of business, because he could lead, and did lead, in a stuff gown, while they could hold no briefs with him. He only received a patent of precedence in 1827, during the junction ministry of Mr. Canning, and then, as is understood, he was with difficulty induced to take the rank, having long since made his footing secure without it. Mr. Scarlett ought to have been made certainly in 1810, when Serjeant Cockell died—possibly earlier. He only was made when Mr. Park went upon the bench in 1816, and when Lord Eldon had no longer the power of withholding his silk gown. He had for some years been second leader all round the circuit in a stuff gown.

"The first remark which occurs upon this load under which Mr. Scarlett, as well as those other lawyers, laboured—and he more than they, because its pressure was more injurious—is, that the injustice of which they were the object, and might have been the victims, was peculiar to his case, and that the blame of it belonged in an especial manner to Lord Eldon." That Lord Loughborough was culpable in respect to Sir Samuel Romilly is certain, though in a lesser degree. No such injury was inflicted upon his seniors as those of Mr. Scarlett, Mr. Brougham, and Mr. Denman suffered, and suffered for no fault of theirs, but for the political sins of their juniors at the bar. Serjeant Clayton and Mr. Walton, and many provincial barristers, were no Whigs, that they should be punished by their own Tory leaders. Mr. Littledale was no Whig, that Lord Eldon should deprive him of business. But if they had been all out of the question, the three leaders themselves were most wrongfully treated in being deprived of their professional rights merely because their political opinions differed from those of the ministry. Nay, Mr. Scarlett had the more right to complain, because his opinions could only be known in private society; he never was in parliament all the while the ministry were oppressing him in his profession for differing with them in his politics. This too was an impediment to his progress at the bar, which Mr. Erskine never had to struggle against. Mr. Pitt and Lord Thurlow disdained to keep him down by refusing him the rank which was his right. He was member for Portsmouth; he voted against Mr. Pitt and Lord Thurlow; he was an intimate

\* Though desirous of upholding the claims of the bar to a fair distribution of silk gowns, we cannot concur in this unmitigated censure of Lord Eldon. The practice of his predecessors and the policy of the times in which he lived, were very different from the present state of things.—Ed.

friend and indeed adjutor of the Prince of Wales (being his Attorney-General in 1783,) whom George III. is known to have cordially hated, as he did all his son's connexions (except his wife). Yet no personal objection was made by that monarch to Mr. Erskine's promotion, any more than by the Prime Minister and the Lord Chancellor to whom he was opposed. He obtained his silk gown in 1783, when of five years' standing; Mr. Scarlett had to wait for it four-and-twenty! But when that Prince of Wales was King, Lord Eldon and Lord Liverpool hearkened to his personal objections against Messrs. Brougham and Denman, which those ministers well knew resolved themselves into their doing faithfully and firmly by their client, his wife, whom he was persecuting to death,—that duty which it is to be hoped every barrister (at least in England) would perform as faithfully and as firmly. Had they basely betrayed their illustrious client, and enabled the King to gratify his malicious vengeance upon her head, Lord Eldon and Lord Liverpool well knew there was no favour which their royal master would not have gladly showered down upon them, possibly including, at no distant period, an offer of the very places they themselves then held. Their blame was therefore great in this instance. In the case of Mr. Scarlett, they had not even the excuse—a poor one doubtless—of the King's caprice. His exclusion from his just rank at the bar was the mere work of common party rancour, or less worthy party contrivance, a work which Lord Thurlow had deemed too dirty for his not very clean hands.

"The next remark to which Mr. Scarlett's long and unjust exclusion gives rise, is, that his political conduct, his party honour, his honest and conscientious avowal of his principles, little less popular in those days than they were prejudicial to the individuals who held them, reflects on his memory the very highest credit. It is usual for men who know little and think less to make severe comments upon this eminent person, and to describe him as an apostate from the Whig party. It is equally usual for Whig partizans to join in this cry, who never in their lives made any sacrifice to their principles.

"We could name men, who never were known for Whigs at all until the party was in possession of power, and who nobly sacrificed to their principles by receiving high and lucrative offices for adhering to the Whig opinions, and further sacrificed by being promoted to still more lucrative office a short time after their first adoption; and yet some of these men have the effrontery to cry out against Lord Abinger for having left their party! When did they and those they act with ever remain one hour out of their just rights and rank because of the Whigs? But Lord Abinger was kept by his Whig principles from being Chief Justice in 1818, and from having the rank of King's Counsel and the ample revenue of leader on the Northern Circuit in 1802, fourteen years earlier than Lord Eldon

by mere compulsion removed the black mark of Whig that stood against Mr. Scarlett's name.

But this is not all, nor anything like all that is suggested by the history of Lord Abinger. We have noted the injurious effects of his principles upon his professional fortunes. Then of course the party, who are now so loud in their complaints of his desertion, did all that in them lay to indemnify this their zealous adherent for the sacrifices he was making to his connexion with them. Kept from his just place in the profession, because he was privately an advocate of Whig opinions, of course they seized the earliest occasion of placing him in Parliament, where he might openly support them by the advocacy of the same principles. The policy of such a course, too, was as manifest as its justice; for no greater gain in force and in weight can accrue to any party, but especially to a party in opposition, than the alliance with able and successful lawyers. Therefore, of course, he was brought into Parliament early in life for some of the Whig seats—close seats afterwards the victims of schedule A?—No such thing; nothing of the kind! Mr. Scarlett, while seriously injured by his principles, saw others daily brought into the House of Commons who had never lost a brief by their adherence to the Whigs; saw Mr. Horner in 1806 seated in Parliament before he was called to the bar; saw Mr. Brougham seated in 1810 after he had gone a single circuit; saw Mr. Denman in 1817 seated before he could have lost a brief by his principles. All this Mr. Scarlett saw, and he continued a Whig, and continued to suffer the professional pains and penalties of a Whig lawyer under the Eldons and the Liverpools. We do not believe he ever condescended to utter any complaint on this neglect; but we are sure that neither Lord Denman nor Lord Brougham, nor Mr. Horner, had he been fortunately still living, could have mustered up courage to condemn very seriously their truly honourable and learned friend for afterwards quitting a party to which he owed obligations like these. That, however, is not our defence for Lord Abinger; and it is a defence which he never dreamt of making for his conduct in 1831. We only state it for the purpose of reminding the Whig party how little ground they have of personal complaint against him. They have been as loud in their clamour, as if, instead of being slighted by them while all but ruining himself for their sake, he had been treated by them with extraordinary kindness and preference during all his professional and political career.

"It was not until the year 1818 that the death of Mr. W. Elliott putting a seat at the disposal of Lord Fitzwilliam, that venerable person had the honour of introducing Mr. Scarlett into the House of Commons as member for Peterborough. No one lawyer in practice and of professional reputation already established ever was so successful as he proved in his first efforts. On the question of the

Duke of York's salary as guardian of the King's person, he made one of the ablest and most powerful speeches ever heard in Parliament upon a merely legal subject. His subsequent efforts were not such as sustained the great reputation which he thus had acquired. And this was owing to the great imperfection of his character, the vanity which, it must be admitted, formed not only a feature of his mind, but acted on it as a moving power with a more than ordinary force. To this are to be traced the only errors he ever committed as an advocate, errors very few in number considering the vast practice in which he was engaged for so many years, and the constant recurrence of occasions on which this his besetting sin might be supposed to spread snares in his path."

The same subject is continued a little further on, in allusion to Mr. Scarlett's official career.

"In 1827 Mr. Scarlett became Attorney General under the junction ministry of Mr. Canning; he went out early the following year on Lord Goderich's government being removed; and when the Catholic question was carried, early in 1829, the main ground of conflict between the moderate Whigs and the liberal Tories having been removed, he with Lord Rosslyn and one or two other Whigs took office with the Duke of Wellington. This they did with the full approbation of Lord Grey and the other opposition chiefs. Lord Fitzwilliam had, indeed, considerably earlier opened a communication, unknown to Sir James Scarlett, with the Duke's government, and recommended his being employed as Attorney General.

"No admittance of the party to any share of power being possible while George IV. reigned and cherished his marked hatred of his former associates and party, little opposition was given to his government for the rest of 1829 and the early part of 1830. As soon as his death was certain to happen in the course of a few weeks, the Whigs prepared again for battle; and the first session of William IV.'s reign passed in fierce party contests. The result of the general election, at which the illustrious duke at the head of the government exerted no influence whatever to control the returns, displaced his government, and Sir James Scarlett went out with the rest. Lord Rosslyn, having refused office with the new ministers, also retired; but it is worthy of observation that Sir James held his high station of Attorney General, with the stipulation that he was at liberty to vote for parliamentary reform when it should be propounded. Mr. Brougham's reform motion, which stood for the day after Sir H. Parnell's was carried against the government, would in all likelihood have turned out the ministers, and then Sir James Scarlett could not well have been overlooked in the new arrangements of office. But the ministers resigning in the morning, the motion was not brought forward. Nevertheless, the new Attorney and Solicitor General took their offices with a notice, that if

a vacancy or vacancies in any of the chief judgeships took place within a few months, they were not to be offended if Lord Lyndhurst and Sir James Scarlett were promoted over their heads. This is certainly the only favour ever bestowed by the Whig party upon their old and faithful and important ally; and it is one to which his sacrifices and his merits amply entitled him. However, he was much displeased with the Lord Chancellor for appointing Lord Lyndhurst to the Exchequer. He was still more annoyed at the extent, regarded by him as full of danger, to which the reform plan of the new government proceeded; and, from the 1st of March, when it was brought forward, he was found, with some other Whigs, ranged in opposition to the Whig ministry. Enough has already been said to show how slender the claims of the party upon his adhesion were. But no claim could of course have been allowed to supersede his clear and conscientious opinions upon important points, far removed above the reach of compromise, and never to be settled by mutual concessions for peace and unity's sake. He differed with his former associates on a fundamental question; and if any test be wanted to determine whether that difference was honest or sordid, let it be sought in his whole political life through times past; which exhibits more sacrifices to his principles than that of any other professional man of his eminence, or indeed of any considerable station in the law.

Nothing is more frequent in the heats of faction than such charges of apostasy. Some of us are old enough to remember when Mr. Burke himself received no other name than the turncoat—the renegade—the apostate. He had differed with his party; they had taken a course which he deemed contrary to their principles; he conceived that, abiding by those principles, he had been abandoned by the Whigs, not they by him. The world, for a while deafened, bewildered, by the clamour which however did not mislead it, suffered this great and good man to be so run down. It now does his memory justice. It now has learnt the lesson, that of all tyranny, the tyranny of party is the most intolerable. It now knows that men are expected to give up every vestige of freedom in word and in thought who join a faction, and that if they once belong to it, they are to be stamped as apostates from their own principles, if they only retain the power of thinking for themselves, and are determined to maintain those principles which the faction for some sordid reason thinks proper to abandon or to betray."

It must be here obviously seen that Lord Brougham is in a great measure writing his own defence, which we think should in fairness be put on record. It is true that he says, "No claim can of course be allowed to supersede his clear conscientious opinions upon important points, far removed above the reach of compromise,

and never to be settled by mutual concessions for peace and unity's sake." But we think too much stress is laid in this argument on Mr. Scarlett's supposed sacrifices for the Whig party. After all, making from six to ten thousand a year cannot be said to be so bad a position, and this we conceive he did for many, many years before he received office. We also think an impression is left on the mind, that if more pains had been taken to please Lord Abinger he would have remained a Whig; which is not very complimentary, and carries a wrong moral. Mr. Scarlett's characteristics as an advocate are more to our taste, and as coming from a constant professional rival are highly valuable.

"Mr. Scarlett was a more consummate leader in the conduct of a cause than in the eloquence wherewith he addressed the jury. Not that he was deficient in some of the greater qualities of the orator. He had a most easy and fluent style; a delivery free from all defects; an extremely sweet and pleasing voice—insomuch that a lady of good sense and of wit once said that as some people are asked to sing, Mr. Scarlett should be asked to speak, so agreeable and harmonious were his tones, though of little compass or variety. But he had far higher qualities than these, the mere external or ornamental parts of oratory. He had the most skilful arrangement of his topics, the quickest perception of their effect either upon the jury, the enemy, or the judge. Indeed he used to choose his seat while he ruled the Great Circuit (the Northern) second to that of which he had a rightful possession by his rank; he preferred the seat on the judge's left, because standing there he had the judge always in his eye as he spoke, and could shape his course with the jury by the effect he found he produced on My Lord. Then his reasoning powers were of a high order; they would have been of a higher, if he had not been too subtle and too fond of refining; so that his shot occasionally went over the head both of court and jury, to the no little comfort of his adversaries. But when he had a great case in hand, or an uphill battle to fight, his argumentation was exceedingly powerful. Nor did he ever lessen its force either by diffusiveness or by repetition, or by the introduction of vulgar or puerile matter; his classical habits and correct taste preserved him from the one, his love of the verdict from the other. His language was choice; it was elegant, it was simple, it was not ambitious. Illustration he was a master of, unless when the love of refining was his own master, and then his illustration rather clouded than enlightened. He had considerable powers of wit and humour, without too much indulging in their display; and no man had a more quick sense and more keen relish of both. Hence he ever avoided the risks of any ridicule, and when treated with it himself showed

plainly how much he felt and how little he approved its application. The greater feats of oratory he hardly ever tried. He had no deep declamation, no impassioned effusion. He indulged in no stirring appeals either to pity or terror; he used no tropes or figures; he never soared so high as to lose sight of the ground, and so never feared to fall. But he was an admirable speaker, and for all cases except such as occur once in the course of several years, he was quite as great a speaker as could be desired. No man who understood what was going on in a trial ever saw the least defect in his oratory; and none could qualify the praise all gave his skill and his knowledge by a reflection on his rhetoric.

"That skill and that knowledge were truly admirable. It really was impossible to figure anything more consummate than this great advocate's address in the conduct of a cause. All the qualities which we set out with describing as going to form the *Nisi Prius* leader he possessed in unmeasured profusion. His sagacity, his sure tact, his circumspection, his provident care, his sudden sense of danger to his own case, his instantaneous perception of a weak point in his adversary's, all made him the most difficult person to contend against that perhaps ever appeared in Westminster Hall, when the object was to get or to prevent a verdict; and that is the only object of the advocate who faithfully represents his client, and sinks himself in that representative character. It is needless to add that no man ever was more renowned as a *verdict-getter*—to use the phrase of the *Nisi Prius* courts.

"A country attorney perhaps paid him the highest compliment once when he was undervaluing his qualifications, and said:—"Really there is nothing in a man getting so many verdicts who always has the luck to be on the right side of the cause." This reminds one of Partridge in 'Tom Jones,' who thought Garrick was a poor actor, for any one could do all he did—"he was nothing of an actor at all." His weight with the court and jury were not unhappily expressed by another person when asked at what he rated Mr. Scarlett's value,—"A thirteenth jurymen"—was the answer. A remarkable instance is remembered in Westminster Hall of his acting in the face of the jury, at the critical moment of their beginning to consider their verdict. He had defended a gentleman of rank and fortune against a charge of an atrocious description. He had performed his part with even more than his accustomed zeal and skill. As soon as the judge had summed up, he tied up his papers deliberately, and with a face, smiling and easy, but

carefully turned towards the jury, he rose and said, loud enough to be generally heard, that he was engaged to dinner, and in so clear a case there was no occasion for him to wait what must be the certain event. He then retired deliberately, bowing to the court. The prosecuting counsel were astonished at the excess of confidence or of effrontery,—nor was it lost upon the jury, who began their deliberation. But one of the juniors having occasion to leave the court, found that all this confidence and fearlessness had never crossed its threshold—for behind the door stood Sir James Scarlett trembling with anxiety, his face the colour of his brief, and awaiting the result of 'the clearest case in the world' in breathless suspense."

We must not omit another trait in his character.

"One instance is recorded on the Northern Circuit of his overweening confidence betraying him, when matched against a party who was conducting his own cause. It was a case of libel, and no justification had been pleaded. He was for the plaintiff, and the defendant was throwing out assertions of the truth of the matter, which the judge interfered to check as wholly inadmissible in the state of the record. Mr. Scarlett, with his wonted smile of perfect, entire, and complacent confidence, said, 'Oh, my lord, he is quite welcome to show—what I know he cannot—that his slander was well-founded.' The man went on, and called a witness or two—nay, he was making much way in his proof, when Mr. Scarlett appealed to the judge for protection. 'No (or rather *Na*).'" said Mr. Baron Wood; 'I won't—it's your own fault—why did you let him in?' The man proved his case and got a verdict, to the extreme annoyance of Mr. Scarlett. But this was a trifling matter compared with other consequences of the same foible. He made himself extremely unpopular, both in the profession and in society, by the same course; for his was not, like Lord Erskine's weakness—a kindly, forbearing, recommending kind of vanity, which, if it sometimes made us smile, never gave pain, not even offence, because it never sought to rise by the depression of others. On the contrary, Lord Erskine, with hardly any exception,<sup>b</sup> was the patron and

<sup>b</sup> Sir A. Pigott was one of them. He had been Mr. Erskine's senior, and on taking rank, allowed him to go over his head on the Home Circuit, which both frequented. It is difficult to conceive how, after so great—almost irregular—an homage paid to his superior powers, he should have retained so much bitterness against this most able, worthy, and learned person. But so it was. Perhaps he hardly ever showed this kind of evil disposition in any other case. In Sir A. Pigott's instance he showed it unremittingly and offensively. It is the only unamiable trait in his attractive character.

\* "He the best player!" said Partridge with a contemptuous sneer. "Why I could act as well as he myself. I am sure if I had seen a ghost I should have looked in the very same manner, and done just as he did."—*Tom Jones*, book xvi. c. 5.

foster-father of other men's merits, lauded their exertions, and enjoyed their success. Not so was Mr. Scarlett's self-esteem; he would rise by depressing others; he would allow nothing to be well done that any but one individual did; he would always intimate how it might have been better done, and would leave little doubt as to the artist whose superior excellence he had in his eye."

We shall conclude with Lord Brougham's account of the distinction between a common law and equity leader, which is in his happiest manner.

"There is the greatest difference between the two sides of Westminster Hall in the qualities which form the leading advocate. In truth, courts of equity hardly know what the lead of a cause is; for each of three, or it may be four or five counsel, go in much the same way over nearly the same ground; and it does not even follow that the junior takes the same view of the case with those who have gone before him. All the materials on which they have to work are fully known before they enter the court; their adversary's case is as much before them as their own; nothing can possibly arise for which they were not thoroughly prepared; and even were it possible to make any slip, as in meeting or proving unable to meet some new view of the case unexpectedly taken by the opposite advocate, or thrown out by the court, (a thing of very rare occurrence,) abundant opportunities remain for supplying all defects and setting all oversights right. The words quick, ready, decisive, sudden, have therefore no application to equity practice, and are hardly intelligible in the courts where bills, answers, affidavits, and interrogatories reign.

"It is far otherwise at *nisi prius*. What was all argument, all talk in equity, is here all work, all action. What was all preparation and previous plan there, here is all the perception of the moment, the decision at a glance, the plan of the instant, the execution on the spot. The office of the leader here well deserves its name; he is everything; his coadjutors are useful, but they are helps only: they are important, but as tools rather than fellow workmen; they are often indispensable, but they are altogether subordinate. He is often wholly—in some degree he is always—uncertain beforehand what his own case is to be; he is still more uncertain of his adversary's. He comes into court with an account in his hand of what his witnesses are expected to swear, because his client has seen and examined them, which he himself has not; but he is necessarily uncertain that they will so swear, both because his client may have ill examined them, and because they may give a different account upon oath before the court and jury. Then he is still more uncertain how far they may stand firm, how far they may be shaken upon cross-examination, and upon the examination by the judge. He is even uncertain of the effect his case and his witnesses may produce upon the judge and

upon the jury. So far is the advocate at *nisi prius* in the dark as to his own case and witnesses. But of his adversary's he knows little or nothing; he may have to meet a story of which he had no kind of warning whatever; and he may have to protect his witnesses against evidence called to discredit them by proving that they have told a different story to others from that which they have told in court. Documents, letters, receipts, acquittances, releases, title deeds, judgments, fines, recoveries,—all, may meet him, as well as unexpected witnesses; and on the spot he may have to devise and execute his measures of protection or of defence. It is needless to observe that this gives the greatest advantage to an advocate of quickness, sagacity, and decision; and that it is a just remark which likens the *tact*, and generally the practical skill and firmness, of the leader in jury trials, to the *coup-d'œil* of the leader in war.

"Nor is this all. Far different from the effects of slip or blunder or oversight in equity are the consequences of the like mistakes or neglects at law; they are almost always irremedial, not seldom fatal. No relief is given against a verdict obtained by the miscarriage of counsel. Against a surprise in the adversary's case, or in the testimony of the witnesses of either side, there may be relief; but if the mishap was owing to the error of counsel, never. Thoughtless men have found fault with this rule; but were a contrary course pursued, the most careless transaction of all business would be one consequence, and another would be the giving business by favour or connexion to the most incapable men. It is quite necessary that the client should, to some such extent, and under some such qualification as has been mentioned, be bound by the conduct of his professional representative.

"From what has been said it will at once appear, first, how difficult and how anxious is the position of a *nisi prius* leader; next, how small a portion of his needful qualification consists of mere eloquence. That which to the vulgar, the spectators at large, may seem the most important part of the whole, is in truth the leader's least important qualification. The object is to gain the cause; mere talk, if he spoke 'with the tongues of men and of angels,' would never get the verdict. By a great speech he may atone for minor errors in the management of the cause; for great slips, or great imperfections in the conduct of it, the eloquence of Demosthenes and Cicero combined could afford no compensation, nor any substitute. The importance of eloquence is admitted; with equal, or nearly equal conduct, the great speaker will have the advantage; but conduct without eloquence is safer by much to trust for the victory than eloquence without conduct. Mr. Wallace was a successful *nisi prius* advocate, with hardly any powers of speech: Mr. Wedderburn, afterwards Lord Loughborough, had but little success, though a very fine speaker; but Wallace was an excellent lawyer and a good leader of a cause; Wedderburn had so

little law, that J. Lee said what he took in on the circuit at York had run through him before he got to Newcastle; and he was, moreover, an indifferent conductor of a cause."

## THE ALTERATIONS MADE IN THE LAW OF JOINT STOCK COMPANIES.

### No. IV.

WE now resume (see *ante*, p. 98) our statement of the alterations made by the recent act in the law of joint stock companies.

We have shown in our last article some of the advantages, and also some of the responsibilities which follow from what is called in the act complete registration. We now continue the subject.

There is to be a regulation, by s. 44, of the *contracts* entered into by the company. A *contract* for the purchase of any article, the consideration of which does not exceed 50*l.*, or for any service the period of which does not exceed six months, and the consideration for which does not exceed 50*l.*, and bills of exchange and promissory notes are excepted; but as to all other contracts it is enacted that they shall be in writing, and signed by two at least of the directors, and sealed with the common seal, or signed by some officer of the company on its behalf expressly authorised so to do, and in the absence of such requisites every contract shall be void, (except against the company on whose behalf it shall be made,) but every contract below the amount of 50*l.* may be entered into by any officer authorised by a general bye-law. Every contract whether, under seal or not, shall be reported to the secretary or other appointed officer.

By ss. 45 and 46, the regulation as to the signatures of bills and notes of deeds is provided for. They must respectively be signed by two directors.

Bye-laws of the company must be reduced into writing, the common seal of the company affixed thereto, and registered at the office for registering joint stock companies, (s. 47,) and a printed copy of a bye-law so registered shall be evidence. (s. 48.)

A register of shareholders is to be kept by every company, (s. 49,) which is to be open to inspection. (s. 50.)

The holder of any share in the company may demand, on the payment of one shil-

ling, a certificate of the proprietorship of his share, (s. 51,) which certificate shall be legal evidence of his proprietorship, (s. 52.) This certificate may be renewed, (s. 53.)

A register of transfer of shares is also to be kept, but no share is to be transferred unless all calls shall have been paid up, unless the contrary is provided in the deed of settlement, (s. 54.)

It will be obvious to the reader, who is accustomed to the usual clauses of deeds of settlement, that many of those provisions to which we have been last advert- ing, are usually provided for by clauses in such deeds. An important provision next follows, however, which relates to the recovery of instalments. It enacts, (s. 54,) that if any shareholder fail to pay any instalment, the company may sue the shareholder in an action of debt in any court of competent jurisdiction; and that in the declaration in any such action it shall be sufficient to state only that at the time of the commencement of the suit, the defendant, as the holder of certain shares, was indebted in a certain sum, and that he had not paid the same; and if, on the trial, it shall be proved that the defendant was the holder of any share when an instalment became due, then such company shall recover such instalment, with 5*l.* per cent. interest on the same.

If any share is held jointly by several persons, then any notice required to be given shall be given to such of the said persons whose name shall stand first on the register, (s. 50.) This is also a clause usually inserted in deeds of settlement.

The next clause is not so common. It enacts (s. 57,) that it shall be the duty of the directors and officers of the company, and they are required to have written or printed copies of an index or abstract of the deed of settlement approved by the registrar of joint stock companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye-laws sealed with the seal of the company as returned to the registry office; and that if at any reasonable time any shareholder, or any person authorised in writing by him, apply at any such place of business of the company to inspect the same, then, on demand thereof, it shall be the duty of the directors to permit such inspection, or otherwise to pay a sum not exceeding forty shillings.



It may be well to provide for this by statutory enactment, but we apprehend that no company could, by the present law, refuse such request.

In our next article we shall inquire in what manner existing companies may avail themselves of the power and privileges conferred by the act, and how far it is advisable for them so to do.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

BY MR. CALEY SHADWELL.

### TRANSFER OF PROPERTY ACT, 7 & 8 VICT. c. 76.

The following is the substance of the third lecture :—

The 5th section is one of the most important, perhaps the most important section that the act contains. The inconvenience which this clause has been introduced to remedy has been felt by lawyers to be a considerable one, and there can be no doubt of the merit of the intention to be attributed to the legislature in endeavouring to rectify it.

The marginal summary of the section is, "Contingent interests may be conveyed by deed."

Under the old law, previous to the passing of the Fines and Recoveries Act, the 3 & 4 Wm. 4, c. 74, and while fines and recoveries were still in operation, persons entitled to contingent remainders, or executory interests in real estate, could convey them before the happening of the contingency, or the coming into possession of the executory estate, whether to a purchaser or otherwise, by means of a fine, which was the ordinary method of conveying such interests, or perhaps by means of a recovery, which, though not commonly used for this purpose, was supposed to have the same effect. Such fine or recovery was said to pass the contingent or executory interest not only by estoppel, but also by conveyance. *Vick v. Edwards*, 3 Peere Wms. 372; *Weale v. Lower*, Pollexfen, 54; *Fearne's Contingent Remainders*, 7th ed. by Butler, pp. 365 & 366. *Preston on Conveyancing*, vol. 1, p. 301.

Feoffment, it was considered, might bar and destroy, but could not convey a contingent remainder.

Lease and release, if made for a valuable consideration, might indeed pass the equitable interest in a contingent remainder or executory devise, but could not affect the legal estate, otherwise than by estoppel.

It would be deviating too far from the present purpose to explain the reasons of this difference of effect among the different kinds of conveyance, and to show by what technical arguments the conclusion was arrived at, that by fine or recovery you could, while by feoffment or lease and release, or any other kind of conveyance, you could not dispose of the whole legal and equit-

able interest in a contingent remainder or executory devise. It was sufficient at present to state that these distinctions were perfectly well known, and that when a contingent or executory interest was to be conveyed to a purchaser, or in any other manner, it was, under the old law, the practice to do it by fine; and that it was necessary to resort to this method of conveyance, whether the interest to be conveyed was a contingent or executory estate for life, a contingent or executory estate tail, or a contingent or executory estate in fee simple. This was the state of affairs previous to the passing of the Fines and Recoveries Act. That act, the 3 & 4 Wm. 4, c. 74, abolished fines and recoveries. That was one of its objects, and the first part of its title; its other object, as stated in the remainder of its title, was the substitution of more simple modes of assurance. It was obvious that this second object might have been carried into effect in two different ways: it might have been enacted that a deed to be executed according to the statute should have all the effect which a fine or recovery would previously have had; and in favour of this mode there were many plausible reasons. It was not, however, the method adopted; the matter underwent very serious discussion by the Real Property Commissioners, and the conclusion that they arrived at was, that, upon the whole, the mode least liable to objection was that of making new and separate enactments for each particular case to be provided for; and this accordingly was the plan pursued in the careful and elaborately-penned provisions of that most excellent statute. One of the cases to be provided for was of course that of the conveyance of contingent and executory interests, the old machinery for conveying which was then abolished. The case of contingent or executory estates tail was provided for by the 15th section of the act, which enacts "That after the 31st of December, 1833, every tenant in tail, whether in possession, remainder, contingency, or otherwise," should have power to dispose of the estate against all persons claiming under the entail. But the case of the estate tail was the only one provided for by the act; contingent or executory estates for life or in fee simple were not mentioned in it. It was plainly a *casus omissus*. This omission was not from inadvertence or hurry, but was deliberately and designedly made. The act as it was, was a long and very complicated one, and it was thought better to leave so grave and intricate a subject as that of contingent and executory interests in general to be dealt with by a separate act, which it was then thought by the commissioners would be allowed to follow very speedily,—the intention of the government to put an end to the commission before its work was accomplished, not having then been promulgated.

This was the history and explanation of what at first sight no doubt appears pretty extraordinary, the abolition, namely, of the old methods of conveying contingent and executory interests,

without substituting anything in their place. Be this, however, as it may, the fact was so, that for eleven years, that is, from the passing of the Fines and Recoveries Act in 1833, to the passing of the present act in 1844, there had not been any means of effectually conveying any contingent or executory estates of freehold, except estates tail. In stating the anomaly and the evil, he was anxious not to overstate them. During this intervening period you could not convey the *legal estate* in a contingent remainder or an executory devise, but by contract or by deed you could have passed the equitable estate, which would have made the remainder-man or executory devisee a trustee for the person taking the equity; and as on the sale of an interest so peculiarly situate as a contingent remainder or executory estate, it would have been the height of imprudence not to sell by special agreement, the insertion of a proviso that the purchaser should be satisfied with an equitable title till the interest should come into possession, would probably in most cases prevent any very great extent of inconvenience being felt from the anomalous state of the law on this subject.

The 5th section is as follows: "That any person may convey, assign, or charge by any deed, any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to, or presumptively entitled to, in any freehold, or copyhold, or leasehold land, or personal property, or any part of such interest, right, or estate respectively; and every person to whom any such interest, right, or estate shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the interest, right, or estate, shall be entitled to stand in the place of the person by whom the same shall be conveyed or assigned, his heirs, executors, administrators, or assigns, and to have the same interest, right, or estate, or such part thereof as shall be conveyed or assigned to him, and the same actions, suits, and remedies for the same as the person originally entitled thereto, his heirs, executors, or administrators, would have been entitled to, if no conveyance, assignment, or other disposition thereof had been made; provided that no person shall be empowered by this act to dispose of any expectancy which he may have as heir, or heir of the body inheritable, or as next of kin, under the statutes for the distribution of the estates of intestates of a living person, nor any estate, right, or interest to which he may become entitled under any deed thereafter to be executed, or under the will of any living person, and no deed shall by force of this act, bar or enlarge any estate tail. Provided also, that no chose in action shall by this act be made assignable at law.

There is a great deal to be observed on the two first words: "That any person may convey," and so forth. What is meant by "any person"? Does it include persons under disabilities? married women? infants? lunatics?

It is difficult to think that if it had been the intention of the legislature to give the power of conveying to any of these disabled persons, they would have expressed such intention in general terms only; one should rather have expected to have found the power given in terms the most accurate and precise.

To help us in this difficulty, we naturally look to the interpretation section; but from this section we derive but little assistance, if indeed by its silence on some points that require qualification, while it gives the required qualification upon others, it does not itself rather add to the confusion. The interpretation clause itself needs an interpretation. With respect to the meaning to be given to the word "person," the 1st section says: "The word 'person' shall extend to a corporation as well as an individual, and every word importing the singular number only shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine shall extend and be applied to a female as well as a male."

Completeness would have required that it should have been explained what these words should not extend to, as well as to what they should. And in particular, as the question is of importance mainly with regard to married women, it should have said distinctly, *ay* or *no*, whether it was or was not meant to include married women. The plain, natural meaning of the words "any person may convey," includes disqualified as well as qualified persons, and whether it was or was not the intention of the legislature to give the power of conveying to persons under disabilities, one cannot help lamenting that they should have left their intention to be collected from inference and construction, when the addition of a line or two would have made everything plain, and prevented all possibility of a mistake.

Some of our late acts do contain an express clause declaring that the powers given by them shall not extend to persons under disabilities. Thus the new statute of Wills, after giving the power of devising, by the 7th and 8th sections enacts, "That no will made by any person under the age of twenty-one years shall be valid;" and "That no will made by any married woman shall be valid, except such a will as might have been valid before the passing of that act."—1 Vict. chap. xxvi. sects. 7 & 8. If the legislature intended in one case to exclude disqualified persons, it is a pity, that in this Transfer of Property Act, they did not in this particular follow the precedent of the new statute of Wills.

The language of the act being thus wanting in explicitness, we must proceed, as best we can, to endeavour to ascertain whether it does or does not enable persons under disabilities to convey, and for that purpose we must use such helps as we can find.

The legislature, of course, could not have intended to give to lunatics the power of conveying; and the case both of lunatics and

of infants, might be at once disposed of by the observation, that the general object of the section being to place the conveyance of contingent interests on the same footing as the conveyance of vested interests, it would be an absurdity to say, it was the intention to give the power of conveying contingent interests to persons such as infants or lunatics, who had not the power of conveying vested interests.

But whether or not the legislature intended to give to married women a power of conveying under this section, is a very different question: it stands upon grounds entirely distinct, is of considerable importance, and is surrounded by great difficulties. The 5th section authorises the conveyance, not only of contingent or executory interests in land, but also of any future interest, (and that as the words seem to apply,) whether contingent or vested, in *personal* property, the words being, "That any person may convey, assign, or charge by any deed, any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to or presumptively entitled to, in any freehold, or copyhold, or leasehold land or personal property, or any part of such interest, right, or estate respectively;" and if by these words a married woman is authorised to sell or mortgage her future interest in *personal* property, the section works a complete and most material alteration of the law, and might affect half the marriage settlements of the kingdom. This was interesting to all those who for their sins had been appointed trustees of marriage settlements.

It had been long settled that a husband alone could not, and a husband and wife together could not sell or mortgage a future equitable interest in personal property belonging to the wife, whether by deed, or by the wife's appearing in a court of equity to consent, which was for some purposes considered to be analogous to the effect of a fine upon her interests in real property, or by any other means whatever.

This hitherto had been looked upon as a broad and marked distinction between settlements of land and settlements of money; and by some it had been considered as giving a great superiority to a money settlement over a settlement of land, that by a money settlement you could make a provision for the wife in the event of her being the survivor, which during the lifetime of the husband was absolutely and totally inalienable, while whatever future interest might be given to her by a settlement of land, she by means of a fine was, with the consent of her husband, enabled to dispose of.

This peculiarity of a money settlement gave it so great a superiority, in the eyes of some practitioners and amongst others, the late Mr. Sanders, the author of the well-known work on *Uses and Trusts*, that whenever he could, and circumstances would allow it, he was in the habit of so framing a settlement of land as to impress it with the character of money by

directing the land to be sold, and the proceeds to be invested in securities, and then treating the proceeds of the sale and not the land itself as the subject of the trusts; and all this principally, though there were other reasons concurring, to bring the settlement within the distinction which had been mentioned.

If this change really had been effected in the law by this statute it will no doubt be speedily acted upon. When a man gets into difficulties, he soon thinks of his interest under his marriage settlement, and of course on the mortgage or sale of that interest he can procure better terms for himself, if by procuring his wife to join, he can effectually bind her interest by survivorship, for that is to offer to the mortgagee or purchaser two life interests instead of one. To the solicitor therefore who may have to conduct a negotiation relating to a security of this kind, whether for the borrower or lender, or to the trustee of a money settlement, who between the conflicting claims of a surviving wife and a mortgagee or purchaser, may till the question be settled find himself anywhere but on a "bed of roses,"—as well as to the counsel who will have to advise, as to the judge who will decide, it must appear a question of some interest to ascertain whether a married woman is or is not within the operation of the 5th section of the *Transfer of Property Act*.

The 5th section relates to personal as well as real estate; but as far as it relates to real estate, the object of the legislature may be supposed to have been, to give the power of conveying such contingent or executory interests as were not provided for by the *Fines and Recoveries Act*, to all those persons who previous to that act could have conveyed such contingent or executory interests by means of a fine; if such be a true description of the general object of the section, it is clear that married women are within that general object; for under the old law, a married woman by a fine might, with the concurrence of her husband, pass a contingent or executory as well as vested interest in land. That she could not do so during the interval between the passing of the *Fines and Recoveries Act* and the present act was part of the grievance; she was within the mischief to be remedied, and if she is omitted from the remedy, the remedy is incomplete.

So much as to the general object of the clause.

Then upon the wording of it.

The clause, amongst other things, gives a power of disposing of any contingent or other future interest in *personal* property; but these words, unless they apply to a married woman, have no meaning at all. [A suggestion as to what was the peculiar object of these words is considered in a future lecture.] A man or a *feme sole* did not require the aid of the statute to assign a future interest contingent or otherwise, in personal property, for there can be no question but that they might have always done so.

A married woman indeed could not assign her

future interest in personal property, but she and she only was thus disabled; it seems, therefore, to follow that these words, which would otherwise have no operation at all, must have been inserted expressly to meet the case of the married woman, and, consequently, that the whole clause applies to her.

It is one of the rules by which statutes are to be construed to look at the language of other statutes relating to the same matter, and as this section of the Transfer of Property Act seems to have been intended to supply a deficiency in the Fines and Recoveries Act, the language of the Fines and Recoveries Act becomes a safe interpreter of the meaning of the language used in the Transfer of Property Act.

The Fines and Recoveries Act, 3 & 4 W. 4, c. 74, in its 1st section, the interpretation section almost in the same words as the similar section of our act, declares, "That every word importing the masculine gender only, shall extend and be applied to a female as well as a male."

In the 15th section, which is the one giving the power of barring entail, the words are, that "every actual tenant in tail" may do so and so; but nobody ever doubted that a married woman was in this section included in those words, "every actual tenant in tail," which in their generality are much on a par with the words of our act, "any person may convey." Indeed, the Fines and Recoveries Act itself interprets the general words, "any actual tenant in tail," to include married women, for in the 77th sec. 3 & 4 W. c. 74, which is the section giving married women the power of conveying vested estates, the act says, "That it shall be lawful for every married woman in every case (except that of being tenant in tail, for which provision is already made by this act) to do so and so."

Then if the general words are to include married women in the Fines and Recoveries Act, why are they not also to include them in the Transfer of Property Act?

This question leads to one very material difference between the two acts. The 77th and the 79th sections of the Fines and Recoveries Act provide effectually, that to the conveyance by a married woman, the concurrence of the husband and the acknowledgment of the deed before certain officers, which might be considered an equivalent for the old solemnities of a fine, should be indispensable. But in the Transfer of Property Act, there were no such provisions, either for the concurrence of the husband or for the acknowledgment of the deed; and the question in substance came to this; shall the omission of these provisions so alter the construction of the Transfer of Property Act, that you shall say, that the 5th section, which, if these provisos had been inserted in the act, would unquestionably have given a married woman the power of conveying, shall, because these provisos are omitted, receive a totally different interpretation, and be held not to apply to the case of a married

woman at all? It was a grave question, and one that he could not undertake to decide. It had been always hitherto the policy of the law of England to require the consent of a husband to any disposition by the wife, of her property, whether real or personal, and also to protect her against anything like coercion on his part by surrounding her conveyance with certain solemnities not required in other cases. If the legislature has thought fit to abandon this, its ancient policy, it might be supposed that it would have done so by very precise and circumstantial enactment, and not dispose of so weighty a point as it were by a side wind, and under the cover of general words; but it was of course open to the legislature so to do if it thought fit; and the plain literal meaning of the words being on all the rules of construction sufficient to include them. The lecturer could not help stating, though with the utmost diffidence and great occasional wavering of opinion, that he thought the 5th section would be held to apply to the case of a married woman. They were always told, on the construction of acts of parliament, that it was entirely beside the question to consider what was said or done on the bill in its progress through parliament; but yet, during the discussion in court of the meaning of an act, if anything be known of its previous history, they were almost sure to hear it either at the bar or from the bench. It might therefore be of use to state what was done in the progress of the bill through parliament. In the bill, as it was originally introduced into the House of Lords by the Lord Chancellor, there were, in addition to the 5th section as it now stands, the following clauses relating precisely to married women.

The 8th clause was, "That any married woman may assign by deed, any such reversionary or other future interest as she may be entitled to in any personal property, in like manner as she might dispose of the like interest in any money to arise from the sale of land."

The 21st clause was, "That any married woman may disclaim any land."

The 22nd clause was, "That no conveyance, assignment, or disclaimer by deed made by any married woman by virtue of this act shall be valid, unless the deed by which the same shall be made be acknowledged by her in the same manner as a deed by which she might dispose of land is required to be acknowledged."

These clauses appear to have been very much considered in the House of Lords, for in the parliamentary paper, which was headed "a bill, as proposed to be amended in the committee," those clauses relating to married women were improved as follows:

6th clause, "That any married woman may, jointly with her husband, assign, dispose of, release, or extinguish, by deed, any such reversionary or other future interest as she may be entitled to in any personal property, in like manner as she might dispose of the like in-

terest in any money subject to be re-invested in the purchase of land."

15th clause, "That any married woman may, with the concurrence of her husband, disclaim any land."

16th clause, "That no assignment, disposition, release, extinguishment, or disclaimer by deed, made by any married woman by virtue of this act, shall be valid or effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by the married woman in the manner directed by the statute for 'The Abolition of Fines and Recoveries, and the substitution of more simple modes of Assurance,' and all the restrictions and provisions of the said statute relative to the extent of the power intended to be given to married women, and to the acknowledgment of deeds by married women, and to the signing a memorandum of such acknowledgment, and to the signing and transmitting of a certificate thereof, and filing such certificate with an officer of the Court of Common Pleas at Westminster, and to the effect of such filing, and other the provisions therein contained relative to deeds by married women, shall (*mutatis mutandis*) apply and be in force with reference to deeds to be executed by married women, pursuant to the power conferred by this act, in the same manner as if all such restrictions and provisions were here enacted at full length."

This last clause, which appeared to have been carefully and elaborately drawn, and which would have left nothing to be desired, and made everything perfectly clear, was retained by the House of Lords, and the bill finally passed that house with that clause forming part of it. Their lordships, however, struck out the clause relating to a disclaimer by a married woman, and also the special clause, as to the assignment by a married woman of her future interest in personalty, thinking, probably, that that was included in the 5th section, as it at present stands. The House of Lords, therefore, the Lord Chancellor the introducer of the bill, and the counsel who were consulted upon it during its progress through the Lords, were not answerable for what subsequently happened. It was in the House of Commons, as appears from comparing the bill as brought down to them with the act as it stands, that that clause which would have prevented all this confusion by requiring the consent of the husband, and the acknowledgment of the deed, was for whatever reason struck out.

## DISBARRING FOR MALPRACTICE.

The Benchers of Gray's Inn have disbarred a member, for practising both as counsel and attorney, and he has appealed to the Judges.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

BILL OF COSTS.—PAYMENT.—APPLICATION TO TAX.—STAT. 6 & 7 VICT. C. 73.—LEGAL CHARGES.—PRESSURE.

*Payment of a bill of costs, for which a promissory note was given and duly paid, takes its date from the day the note was paid, and not from the day it was given—in the absence of special circumstances.*

*An application by petition for taxation of a bill of costs, is to be considered as made, at the latest, on the day on which the petition is answered, and not when it is served on the party or heard by the court.*

*Held, accordingly, that a petition answered on the 16th November, 1843, but not then heard, for referring for taxation a bill of costs, for which a promissory note was given on the 3rd November, 1842, and paid on the 17th, was within the twelve calendar months limited for applications for such reference by the stat. 6 & 7 Vict. c. 73.*

*The court will not refer a paid bill of costs for taxation, unless the petition points out not merely exorbitant charges, but charges that bear the character of fraud and imposition on the client.*

*Two guineas a day is a regular charge for attending on the examination of witnesses in the country,—whether by the solicitor or his clerk is immaterial.*

*The mere continuance of the relation of solicitor and client at the time the client paid the bill, does not imply such a pressure on him as would justify the court in referring the paid bill for taxation.*

THIS was an appeal from a decision of the Master of the Rolls upon a petition for a reference for taxation of a bill of costs, after payment. Mr. Wagstaffe, a defendant in a cause, retained Mr. Sanders as his solicitor; and he, in October 1842, delivered his bill of costs, amounting to 135*l.* 2*s.*, and demanded payment. Wagstaffe passed his note for the amount, dated the 3rd of November, 1842, payable in 14 days, and it was paid on the 17th of the same month, while the relation of solicitor and client was still subsisting between the parties. On the 15th of November, 1843, Wagstaffe presented a petition at the Rolls for a reference of the bill of costs for taxation. That petition was answered on the 16th in the usual manner, requiring all parties concerned to attend on the then next petition day, (24th November,) and that notice be given them. The petition was served on Sanders on the 21st November, but it was not heard for some time after the 24th.

One principal question, involving others,

was, whether the petition was in due time; viz., within twelve calendar months after payment, as provided by the 41st section of the act 6 & 7 Vict. c. 73. Another question was, whether undue influence and pressure on the client ought to be inferred, without evidence of actual pressure, from the continuance of the relation of solicitor and client at and after the time the costs were paid. And a third question was, whether 2 guineas a day, charged in the bill for Mr. Sanders' clerk examining witnesses in the country, was an overcharge. The two latter questions were raised in the argument in this court; the first—with the question involved in it—was decided by the Master of the Rolls in the affirmative. (5 Beavan, 415, et seq.)

The questions were argued last June by Mr. Wakefield, Mr. Cooper, and Mr. Moore, for Sanders, and by Mr. J. Russell and Mr. Stinton, for Wagstaffe.

The points of the arguments and the principal cases referred to are fully noticed in the following judgment.

The Lord Chancellor.—This was a petition for a reference to tax a bill of costs, after the bill had been settled and paid. It was brought here on appeal from the Master of the Rolls.

The facts are these: Mr. Sanders had been retained by Mr. Wagstaffe, the petitioner, as his solicitor in the cause. The retainer was given in the year 1841, and in the month of October in the following year, 1842, he delivered a bill of costs for 135*l*. He pressed for payment, and Mr. Wagstaffe gave him a promissory note, payable in 14 days. That note was dated on the 3rd of November, and became due therefore on the 20th, but in point of fact it was paid on the 17th. The petition to have the bill of costs referred to the Master for taxation was presented at the Rolls on the 15th of November, 1843, and it was answered on the 16th, the following day, but did not come on to be heard for some time afterwards. The first objection taken at the hearing was, that the petition for taxation of the bill was not presented till after the expiration of the twelve months, the period within which, according to the provisions of the late act 6 & 7 Victoria, a petition for taxation of costs after payment could be entertained. The words of the 41st section of the act are: "Provided that the application for such reference be made within 12 calendar months after payment." The first question to be determined was, whether the time so prescribed by the act had expired when the application for the reference in this case was made.

It had been contended, in support of the argument of the time being out, that a promissory note was a payment, and if that was so, then the time had expired before the petition to tax was presented, and the objection was one that must be sustained. In the course of the argument, I expressed an opinion that the fact of a debtor giving a promissory note to his creditor, without more, did not make an absolute payment: the effect of giving a promissory

note was merely to suspend for a time the remedy that the creditor had against the debtor. The creditor did not abandon his right to sue for his debt: the claim remained, and the debt was not discharged till the money was actually paid. I am therefore of opinion that payment in this case was not made until the 17th of November, when the amount of the note was paid in cash. There is a report of a case in the *Jurist*, in May 1844, in which the Court of Exchequer, following the decision of the Master of the Rolls in this very case, has taken the same view of this question, viz., that the promissory note is not payment.\* I am, therefore, of opinion that there is no foundation for the objection, that the petition to refer the bill for taxation was not presented in due time, in consequence of the promissory note having been given on the 3rd; the actual payment not having been made till the 17th of November.

The next point made in the argument was, that the petition for taxing the bill must be taken as bearing date on the day of the hearing of the petition, and that as it was not heard till after the 17th of November, it came too late. I am of opinion that there is no foundation for that objection. The petition was presented to the Master of the Rolls on the 15th; it was answered on the 16th; and the time for hearing being in the discretion of the court, could not therefore be brought into the calculation of time under the act of parliament. When a party has presented his petition to the judge's secretary, he has done what lay in his own power; at all events, when the petition is answered by the signature of the Master of the Rolls being put to it by his secretary, with the usual direction, that is to be taken, for this purpose, to be the time of the application for the reference to tax the bill. This petition being presented on the 15th, was answered on the 16th (of November, 1843); the money was not paid till the 17th of November, 1842; so that the twelve calendar months had not expired.

The next point raised during the argument related to the merits: it was said there were objectionable items in the bill of costs. The rule of the court with respect to the opening of a bill for taxation requires that the petition should bring forward some objectionable charges in the bill, not merely charges that the Master might probably not allow on taxation, but charges that bear the impress of fraud or imposition on the client. At the time this matter was heard before me, the items of the account were very narrowly examined, and the conclusion I came to was, that none of the items bore the character of fraud or imposition. There was only one objectionable item particularly relied on, and that was a charge of two guineas a day for attendance of the solicitor's clerk upon the examination of witnesses in the

\* *In re Harries*, 8 Jur. 453; 13 Law J., N. S. S. C., Exch. 259.

country. It was argued, that as the solicitor did not attend himself, the charge ought to have been confined to one guinea a day. I thought that was a proper point for inquiry, and I referred that question to the Taxing Masters, and I have received a certificate, signed by the whole of them, stating that the practice allowed two guineas a day, whether the solicitor acted by himself or by his clerk, in the examination of witnesses, and that the practice was uniform. Looking, therefore, at the items, I see no sufficient reasons to sustain a reference of the bill for taxation.

There remains one other point. It was argued that the relation of solicitor and client still subsisted between those parties at the time the promissory note was given, and therefore that the payment was made under pressure; or taking it in another view, that the mere existence of such a continued relation was equivalent to pressure. This objection was taken by Mr. Russell, and two cases were cited by him in support of it: *Howell v. Edmunds*,<sup>b</sup> before Sir James Leach; and *Crossley v. Parker*,<sup>c</sup> before Sir Thomas Plumer. In the first case there had been evidence of actual pressure, and therefore Sir J. Leach was not called upon to decide the question on the ground of pressure from the continued relation of solicitor and client; and in the other case the circumstances appear to be so peculiar as to preclude the decision from being urged in support of a general principle. Undoubtedly the relative situation of solicitor and client ought to be considered with attention, when a question of pressure is insisted on, but I do not think there is sufficient in the present case to sustain such an objection. In the case of *Cooke v. Settree*,<sup>d</sup> Lord Eldon, after saying he would lay down the rule, in regard to pressure on the part of the solicitor on the client, as strong as any judge, and would go much farther than Lord Camden and Lord Hardwicke went in the cases there referred to, in respect to the discovery of gross errors or charges, amounting to fraud and imposition on the client, even after payment—says then, in reference to the case before him, “Is there any evidence of undue pressure on the situation and feelings of the client? I cannot go the length of holding that a bond, given in 1810, is to be complained of in 1812, upon the mere ground that there was not at the time an end of all business depending between the client and the attorney, or of any particular suit in which they were engaged.” He seems, therefore, to be of opinion that after payment of the costs the mere continuance of the relation of solicitor and client would not, without actual pressure, justify the court in referring the bill for taxation. And in the subsequent case of *Plenderleath v. Fraser*,<sup>e</sup> in which the former case was cited; he says, “It seems to be settled, that where payment having been made of a solicitor’s bill, it has

long been acquiesced in, the court will not direct taxation unless very gross charges are distinctly pointed out.” And not thinking the charges in that case so gross as to amount to fraud, he refused the reference to tax the bill, with costs.

I ought also to observe that the whole of this question came to be discussed before my late learned predecessor, in the case of *Horlock v. Smith*.<sup>f</sup> He there examined all the causes on the subject, and coming to *Howell v. Edmunds*,<sup>g</sup> he says, “taxation was ordered upon the ground, not only that the suit was pending when the bill was paid, from which circumstance alone Sir John Leach said, that influence and pressure would be presumed;” it was not necessary for him to decide whether Sir John Leach was right or wrong; but with his usual caution he expressed himself thus:—“It certainly appears to lay down a proposition to which it is not necessary to advert here; namely, that a bill paid during the pending of a suit will be opened, inasmuch as from the pending of the suit pressure will be inferred, which perhaps may admit qualification; but Sir John Leach did not decide that particular case upon that ground, because he found evidence that there had been actual pressure.” The same question afterwards coming before the same learned judge, in *Waters v. Taylor*,<sup>h</sup> he expressing himself in exact correspondence with what Lord Eldon said in the cases in Vesey and Beames. “This case,” he says, “differs from that of *Horlock v. Smith* in this, that the security was taken while the suit was depending, and whilst the relation of solicitor and client continued; but as it was in *Cooke v. Settree*; and in *Plenderleath v. Fraser*, and *Gretton v. Leyburn*,<sup>i</sup> the relation of solicitor and client continued at the time of the settlement. No doubt the settlement or payment of a solicitor’s bill pending a suit, and whilst the relation continues, affords grounds upon which the accounts will be much more easily opened and the bills referred for taxation than in other cases; but if these circumstances alone were in all cases to be held sufficient ground for taxation, no solicitor, who continues to act for a client, would be secure of any settlement during the life of the client.” These observations show distinctly that that learned judge did not think that the continuance of the relation of solicitor and client was alone sufficient to justify the court in ordering taxation of paid bills. I concur in that opinion; I am sure, referring to the act 6 & 7 Vict., it was not intended to alter the law; I do not think it necessary to refer to *Massey v. Drake* at the Rolls. I am of opinion that the subsisting relation of solicitor and client between the parties at the time of payment of the bill, is not sufficient to justify a reference of the bill for taxation after payment.

Several of the counsel who had argued the

<sup>b</sup> 4 Russ. 67.

<sup>c</sup> 1 Jac. & W. 460.

<sup>d</sup> 1 Ves. & B. 126.

<sup>e</sup> 3 Ves. & B. 174.

<sup>f</sup> 2 Myl. & C. 495.

<sup>g</sup> P. 517.

<sup>h</sup> 2 Myl. & C. 526.

<sup>i</sup> Turn. & Russ. 407.

points now with regard to the costs, both in this and in the court below, the costs there being reserved, made a question whether his Lordship had affirmed wholly, or in part reversed, the decision of the Master of the Rolls.

The Lord Chancellor said, the only points he had a doubt about as to the hearing was, as to the charge of two guineas a day for the solicitor's clerk, and that he referred for inquiry to the taxing masters. He was of opinion, on all the authorities, that the subsisting relation of solicitor and client at the time the bill of costs was paid was no sufficient ground for referring it for taxation. Neither had he any doubt in the other points decided at the Rolls. He would not deal with the costs there. He would give the costs of the appeal to the respondent.

*Sayer v. Wagstaffe.* June 1, 3, and 5 and Dec. 3, 1844.

#### Vice-Chancellor of England.

[Reported by E. VANSITTART NEALE, Esq.  
Barrister at Law.]

PRACTICE.—MASTER.—60TH ORDER OF 1828.

*Under the 60th order of 1828, the Master has power to direct what parts of any books, papers, or writings left in his office a party may inspect, without any special direction by the court.* Semble.

THIS was a motion, having for its object to procure the introduction of certain words into the minutes of a decree, which directed the production of books, and other documents before the Master, and also an issue, where these books and documents would have to be given in evidence, the effects of the words being to limit the right of the plaintiffs to inspect these books and documents to such parts of them as related to the matters in question in the cause. The argument, so far as it was of general interest, turned upon the construction to be put upon the 60th order.

Mr. Bethell and Mr. Schomberg for the motion.

Mr. Walker, contra.

The Vice-Chancellor said, he thought the best way would be to frame the decree so as to meet the justice of the case. When the 60th order was mentioned, it struck him that there might be a question whether, when the books were produced before the Master, he had not under that order the power of himself directing what parts should be examined and what not. His honour then read the order, dwelling upon the concluding portion of it, which gives the Master the power, in case he shall not deem it necessary that any books, papers, or writings should be deposited in his office, to give "direction for the inspection thereof by the parties requiring the same, at such time, and in such manner as he shall deem expedient." He remarked that it seemed to him inconsistent to say, the Master should have the power of directing the man-

ner in which books or documents were to be examined, when they were not in his office, and yet not possess it when they were in his office, and therefore under his more immediate care. Therefore he thought that the Master had the power. But in this case, it struck him that, inasmuch as the 60th order, however construed, would not regulate the production of the documents at the issue, while yet it was necessary for the justice of the case, that the same limitation should be imposed on their production there as before the Master; and therefore as the words, "so far as relates to the matters in question in this cause," must be introduced in relation to the trial, they might as well be extended to the order for production before the Master.

The order was accordingly drawn up in that form,

*Darby v. Duncan.* Dec. 13, 1844.

#### Vice-Chancellor Bigham.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

PRACTICE.—MOTION, SHORT NOTICE OF.

*Where leave is given to move upon short notice, the notice of motion must express upon the face of it that the motion is to be on short notice.*

MR. Taylor had moved that the registrar be directed to draw up the order for the discharge of a prisoner, the order having been pronounced by the court, but some delay having arisen from the absence of papers in the hands of counsel,

The court said, that the registrar would draw up the order without such papers, if he could, upon notice being given of leave to move on short notice. Notice was served of leave to move. The motion being now made,

His Honour refused to make the order, upon the ground that it did not appear upon the notice of motion, that it was to be made upon short notice by leave. The opposite party was entitled to two days' notice, unless that appeared in the notice of motion. This had been recently directed in *Harris v. Lewis*, 8 Jur. 1063, and *Woodham v. Fisher*, (not reported,) by Vice-Chancellor Knight Bruce.

*Read v. Pyke.* Dec. 20, 1844. Lincoln's Inn.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMMERTON, Esq., Barrister at Law.]

PRACTICE.—DISCONTINUANCE.

*To a declaration in trespass, containing two counts, one for trespass, and the other de bonis asportatis, the defendants pleaded, first, not guilty; and, secondly, that the goods in the declaration mentioned, were not the goods of the plaintiff. At the trial a verdict was found for the plaintiff, with*



leave reserved for the defendants to enter a verdict on the second plea. The defendants obtained the judgment of the court to enter a verdict on the second plea. In the following term a rule was obtained for leave for the plaintiff to discontinue the action on payment of all costs incurred in the former proceedings, in order that a second action might be brought to try the right to the goods in question. The court refused the application under the circumstances; the general rule being, that a discontinuance will not be allowed after a general verdict, though it may sometimes be allowed after a special verdict.

THIS was an action of trespass. The declaration contained two counts, one for disturbing the plaintiff's fishing nets, and the other *de bonis asportatis*. The defendants pleaded not guilty; and secondly, that the fish in both counts of the declaration were not the fish of the plaintiff. The case was tried on the Western Circuit before Mr. Serjeant Atcherley, and a verdict found for the plaintiff, with leave for the defendants to move to enter a verdict on the second plea. The plaintiff and defendants were engaged in a certain fishery, which was regulated by the provisions of a local act of parliament. The plaintiff had gone with his vessel in pursuit of some fish, and had almost surrounded a shoal of fish with his nets, when the defendants came up, and breaking in upon the nets of the plaintiff, disputed with him the right to the fish. The value of the fish was estimated at about £700, and the money was deposited to await the result of the trial. The case afterwards came on to be heard in Easter Term, and the court was of opinion that the plaintiff under the circumstances had not sufficiently reduced the fish into his possession so as to enable him to support the finding of the jury on the second plea. A verdict was therefore entered for the defendants on the second plea. In Trinity Term a rule was obtained, calling on the defendants to show cause why a nonsuit should not be entered, or a new trial had on payment of all costs.

Mr. Crowder showed cause.

The general rule of practice is, that a discontinuance may be entered by leave of the court after a special verdict, but not after a general verdict, *Price v. Parker*:<sup>a</sup> *Roe v. Gray*.<sup>b</sup> It was decided by the Court of Exchequer in *Goodenough v. Butler*,<sup>c</sup> that after a general verdict for the defendants the plaintiff cannot discontinue. To grant this application would be in effect to allow the parties to try the case several times. The case has been submitted to a jury, and this court has directed how that verdict ought to be entered. The plaintiff asks a great indulgence of the court, and there are not sufficient reasons shown to induce the court to grant such an indulgence.

Mr. M. Smith in support of the rule.

The state of the record is, that a verdict stands for the plaintiff with nominal damages for the trespass done to his fishing nets. This will prevent the plaintiff from bringing any future action for the recovery of the money deposited. The jury was of opinion that the plaintiff was entitled to the value of the fish, but because the plaintiff had not, in point of law, got possession of the fish by means of his nets, he is to be totally deprived of all benefit from the verdict. The plaintiff seeks to be placed in such a situation that he may be allowed to contest the right to the money that has been deposited, and he asks that indulgence on the terms of his paying all the costs of the former proceedings. The court may direct a discontinuance to be entered at this stage of the proceedings. This verdict is in fact the same as a special verdict. The defendants had leave to enter a verdict, but that is comparatively a new practice. [*Coleridge, J.* The reason of the rule seems to be, that a general verdict is final, but a special verdict is subject to further discussion. You come here too late after we have given our decision on the case.] This rule was obtained in Trinity Term, and there was not time for the argument during that term. Justice certainly has not been done. The value of the fish is very considerable, and unless a discontinuance be allowed, the plaintiff will be stopped from bringing another action to recover their value.

Lord Denman, C. J. The circumstances of this case are rather peculiar. The rule of practice is, that a discontinuance is not allowed after a general verdict, yet it may be allowed after a special verdict, but here the court says that the verdict is general on both counts of the declaration. The court may be induced to relax the rule under some circumstances, but not under circumstances like the present. The plaintiff should be aware of his own case before he goes to trial. The delay in this case does not appear to be satisfactorily accounted for. Perhaps the more proper mode of proceeding would have been for the plaintiff to have obtained a cross rule before the former arguments were disposed of. If we granted the application we might be called upon to entertain similar applications at any distance of time. We cannot go out of our way to protect parties against the consequence of their own acts.

Rule discharged.

*Queen v. Hichin and others.* Michaelmas Term, 1844.

Exchequer.

[Reported by A. P. HURLESTONE, Esq., Barrister at Law.]

COSTS OF DEMURRER AND DISCONTINUANCE.

A defendant pleaded several pleas upon which issue was joined, and also a plea to which the plaintiff demurred and had judgment.

<sup>a</sup> 1 Salk. 178.

<sup>b</sup> 2 Bl. R. 815.

<sup>c</sup> 2 Cr. M. & R. 240.

Afterwards the plaintiff obtained the ordinary rule to discontinue on payment of costs. The costs of the demurrer exceeded those of the discontinuance, and the Master on taxation deducted the latter from the former. Held, that the plaintiff was entitled to have the costs of the demurrer taxed in his favour, and that the defendant might (if so advised) enter a judgment of discontinuance or bring a writ of error.

An action had been brought for disturbance of a market, and the defendant pleaded several pleas upon which issues in fact were joined, and also a plea to the whole cause of action to which the plaintiff demurred, and had judgment before trial, the plaintiffs obtained the ordinary rule to discontinue on payment of costs. When the costs were taxed, it appeared that the amount to which the plaintiffs were entitled in respect to the demurrer, exceeded the amount which they had to pay by reason of the discontinuance. The Master therefore deducted the cost of the discontinuance from the costs of the demurrer. A rule nisi had been obtained to review the taxation, or to set aside the rule to discontinue.

*V. Williams* showed cause.

If the cause had gone down to trial, and the plaintiffs had been nonsuited, the defendant would have had the general costs of the cause, and the plaintiffs costs on the demurrer would have been deducted from the defendant's costs. The fact of the plaintiff's costs exceeding those of the defendant, can make no difference in the principle of taxation. A judgment of discontinuance is the same in effect as that of a nonsuit. At common law a plaintiff might have been nonsuited after verdict. The 2 Hen. 4, c. 7, altered the law in that respect. It is evident from the language used in the statute, 8 Eliz. c. 2, that a discontinuance and a nonsuit are similar. A plaintiff may terminate a suit either by *nolle prosequi* or by discontinuance. Formerly a *nolle prosequi* was held to be in the nature of a *retraxit* and a bar to any future action for the same cause. *Bowden v. Horne*, 7 Bing. 216. The entry of a judgment of discontinuance of *non pros*, and of nonsuit, are in terms the same, *Brant v. Peacock* 1 B. & C. 649.

*Henderson* in support of the rule. The plaintiffs by discontinuing have put an end to the suit, and have no means of enforcing payment of the balance. A nonsuit is essentially different from a discontinuance. In the former case judgment may be entered up and a writ of error brought, but not so in the latter. The plaintiffs by discontinuing have deprived the defendant of the means of carrying the record to a court of error, and of obtaining the costs of the demurrer, which he would do if the judgment were reversed by the court above. *Gildart v. Gladstone*, 12 East, 668; *Peacock v. Harris*, 5 Adol. & E. 449. The rule of Hilary Term, 2 W. 4, c. 106, enables a defendant to obtain his costs on a discontinuance by signing judgment of *non. pros*. Unless that be done no

judgment can be entered, because the proceedings are terminated by the discontinuance. That rule requires a plaintiff to pay costs, but according to this taxation the plaintiff would receive them.

*Pollock, C. B.* The rule must be discharged. It is argued in support of it, that the plaintiff has no means of enforcing payment of this balance; but this is no reason why justice should not be done to the extent to which the court have the power. It is further said, that the costs of the demurrer are lost by the discontinuance. That also is no valid ground. If an interlocutory motion had been made by the defendant and discharged with costs, the Master, when he taxed the costs of the discontinuance, would deduct the costs of the interlocutory motion. It is further said, that the plaintiffs by discontinuing have deprived the defendant of the means of carrying the record to a court of error. That ground also fails. A judgment of discontinuance may be entered on the record of either party, and as such judgment is similar to a judgment of nonsuit, I do not see why a writ of error may not be brought upon the one as well as the other.

*Parke, B.* The rule of court only obliges a plaintiff on discontinuance to pay such costs as the Master shall tax, and as the costs to which the plaintiffs are entitled on the demurrer exceed those of the discontinuance, there is nothing in the rule to prevent them from insisting upon payment of the balance. It is argued that the discontinuance is an abandonment of the suit, but that is not so: the defendant may cause the judgment of discontinuance to be entered on the record in the form given in *Tidd's Appendix*, and may, if so advised, bring a writ of error thereon. If the defendant intends to bring a writ of error, the costs should be taxed separately, because if the judgment on the demurrer should be reversed, the defendant would be entitled to the costs of it. If the defendant does not bring a writ of error that will be unnecessary.

*Rolfe, B.* The rule nisi was granted by me while sitting in the other court, and at the time I was struck by the argument now used, that the plaintiffs by discontinuing have deprived the defendant of the means of bringing a writ of error. That would be a gross injustice, but I am satisfied that it is not so. The judgment of discontinuance may be entered on the roll, and if it appears by the record that an erroneous judgment has been given, it may be reversed on error. The rule of court which has been cited has really nothing to do with the question, it merely says that if the plaintiff shall fail to comply with the terms imposed, the defendant may sign judgment of *non pros*.

Rule discharged.

*The Mayor and Corporation of Macclesfield v. Gee.* Exchequer, Michaelmas Term. Nov. 23, 1844.

## MASTERS EXTRAORDINARY IN CHANCERY.

From Nov. 20th to Dec. 26th, 1844, both inclusive,  
with dates when gazetted.

Grey, George, Torquay, Devon. Dec. 20.  
Gwynne, John, Tenby, Pembroke. Dec. 20.  
Davies, Thomas William, Leominster. Dec. 10.  
Haines, George James, Farringdon. Dec. 20.  
Heath, Allan Borman, Andover, Southampton.  
Dec. 10.  
Hinde, William, Liverpool. Dec. 20.  
Palmer, George, Rugeley, Stafford. Dec. 20.  
Pemberton, Charles, Manchester. Dec. 6.  
Scurfield, George, Sunderland. Dec. 20.  
Stevenson, George, Leicester. Dec. 20.  
Topham, Thomas, Middleham, York. Dec. 13.

## DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.

From Nov. 26th to Dec. 20th, 1844, both inclusive,  
with dates when gazetted.

Champion, Charles, and Henry Barham, 32, Ely Place, Attorneys and Solicitors. Dec. 17.  
Coe, James, and Robert Paterson, Size Lane, Attorneys and Solicitors. Dec. 20.  
Motteram, James, and Charles Giddy, Birmingham, Attorneys and Solicitors. Dec. 20.  
Vollans, John William Thompson, and Richard Cautley Cross, East Retford, Attorneys and Solicitors. Dec. 6.

## BANKRUPTCIES SUPERSEDED.

From Nov. 26th to Dec. 20th, 1844, both inclusive,  
with dates when gazetted.

Attwood Richard, and John W. Hewett, of Fareham, Attorneys and Solicitors. Dec. 10.  
Buttress, William Cowland, Sewardstone, Waltham Holy Cross, Essex, Silk Throwster, Farmer. Dec. 17.  
Higginbottom, Samuel, Dukinfield, Side of Stalybridge, Chester, Shopkeeper. Dec. 20.  
Spencer, Joseph, jun., 68, Christian Street, Liverpool, Builder. Dec. 3.

## BANKRUPTS.

From Nov. 26th to Dec. 20th, 1844, both inclusive,  
with dates when gazetted.

Attwater, William, 24, Devonshire Street, Queen Square, Dyer and Scourer. Belcher, Off. Ass.; Whittaker, 7, Furnival's Inn, Holborn. Dec. 13.  
Ayling, James, Commercial Street, Leeds, Cabinet Maker and Upholsterer. Turquand, Off. Ass.; Torkington, New Bridge Street. Dec. 10.  
Balne, Humphrey Charles, Poole, Grocer. Follett, Off. Ass.; Shaw, Furnival's Inn. Dec. 20 and 17.  
Barton, William Henry, 9, Bedford Place, Commercial Road East, and of 2, Church Lane, Whitechapel, and of 5, Town Pier, Gravesend, Boot

and Shoemaker. Follett, Off. Ass.; Heath, Gracechurch Street. Dec. 3.  
Beale, John Cadoxton, Glamorgan, Grocer and Shopkeeper. Hutton, 19, St. Augustine's Place, Bristol; Beer, Swansea, or Short, Bristol. Dec. 20.  
Bentley, Henry, Liverpool, Commission and Forwarding Agent. Turner, Off. Ass.; Oliver, Old Jewry; Evans, Liverpool. Dec. 13.  
Beresford, Thomas, Lincoln, Boat Owner and Carrier by Water. Fearn, Off. Ass.; Galworthy & Co., Cooke's Court; Andrew, Lincoln; Payne & Co., Leeds. Dec. 13.  
Berley, John Peart, 26, Brompton Row, Brompton, Plumber and Glazier. Whitmore, Off. Ass.; Buchanan & Co., Basinghall Street. Dec. 20.  
Blockley, Richard, Crewe, Chester, Linen Draper. Pitt, Off. Ass.; Mackinson & Co., 3, Elm Court, Middle Temple; Atkinson & Co., 3, Norfolk Street, Manchester. Dec. 17.  
Brett, John, Whiting Street, Bury St. Edmunds, Suffolk, Currier and Leather Seller. Green, Off. Ass.; Nettleship, 15, Clifford's Inn; Durrant, Bury St. Edmunds. Dec. 10.  
Brown, John, Newcastle-under-Lyme, Painter and Gilder. Bittleston, Off. Ass.; Harrison & Co., Edmund Street, Birmingham; Jackson, 2, Field Court, Gray's Inn. Nov. 26.  
Bucknall, Stephen, Hendon, Middlesex, Carman. Graham, Off. Ass.; Abrahams, Lincoln's Inn Fields. Dec. 6 and 10.  
Burchett, William, 94, Whitechapel Road, Chemist and Druggist. Johnson, Off. Ass.; Turner, Mount Place, Whitechapel Road. Dec. 3.  
Burgess, John, Cratfield, Suffolk, Farmer and Cattle Dealer. Belcher, Off. Ass.; Wilde & Co., College Hill. Nov. 26.  
Carter, Charles, Saddington, Leicester, Miller and Baker. Whitmore, Off. Ass.; Braham, Chancery Lane; Rawlinson, New Street, Birmingham. Dec. 6.  
Clarke, William, Sheffield, Builder. Young, Off. Ass.; Moss, Cloak Lane; Blackburn, Leeds. Nov. 26.  
Cox, William, Crown Street, Soho, General Dealer. Belcher, Off. Ass.; Pain & Co., 5, Great Marlborough Street, and 83, Basinghall Street. Nov. 26.  
Creigh, Benjamin, and Thomas Russell Creigh, Newcastle-upon-Tyne, Cartwrights and Builders. Baker, Off. Ass.; Gibson, Moseley Street, Newcastle-upon-Tyne; Mupkes & Co., 6, Frederick's Place, Old Jewry. Dec. 13.  
Cross, William, Chester, Lead Merchant and Distiller. Casanova, Off. Ass.; Sharpe & Co., Bedford Row; Carter, Liverpool. Nov. 29.  
Dotesio, Charles, Royal Hotel, Slough, Bucks, Hotel Keeper and Victualler. Follett, Off. Ass.; Froggatt, Clifford's Inn. Dec. 3.  
Drury, William Starr, Chester, Ironmonger. Bird, Off. Ass.; Chester & Co., Staple Inn; Hostage, Chester. Dec. 10.  
Figge, John Frederick, 3, Dunster Court, Mincing Lane, Merchant. Turquand, Off. Ass.; Nicholson & Co., Throgmorton Street. Nov. 26.  
Finlayson, John, late of 11, Ranelagh Street, Pimlico, Grocer and Tea Dealer. Belcher, Off. Ass.; Tyas & Co., 13, Beaufort Buildings, Strand. Dec. 3.  
Foothead, Henry Hugh, 14, Fore Street, Cripplegate, Wholesale Milliner. Graham, Off. Ass.; Wilkins, Furnival's Inn. Dec. 20.  
Forster, John, Armley, Leeds, Cloth Manufacturer. Fearn, Off. Ass.; Smith, Leeds, Wiglesworth & Co., 5, Gray's Inn Square. Dec. 13.

- Fothergill, Francis, and James M'Innes, Bell's Close, near Sootwood, Northumberland, Lamp Black, Coal, Tar, and Ammonia Manufacturers. *Wakley*, Off. Ass.; *Chisholme & Co.*, 64, Lincoln's Inn Fields; *Harle*, Newcastle-upon-Tyne; *Kent*, Newcastle aforesaid. Dec. 17.
- Francis, Absalom, Halkin, Flint, Ironfounder. *Morgan*, Off. Ass.; *Milne & Co.*, Temple; *Roberts & Co.*, Flintshire. Dec. 13.
- Gibbons, John Thomas, Eaton, Buckingham, Grocer and Tea Dealer. *Green*, Off. Ass.; *Bell & Co.*, Bow Churchyard. Dec. 10.
- Hall, John, Willington West Farm, Wall's End, Northumberland, Cowkeeper. *Wakley*, Off. Ass.; *Wilson*, Sunderland; *Bell & Co.*, Bow Churchyard. Nov. 26.
- Hambleton, Charles Henry, late of Northampton Arms Public-house, Northampton Street, Bethnal Green, Licensed Victualler. *Edwards*, Off. Ass.; *Malton & Co.*, 60, Carey Street. Nov. 26.
- Harris, John Quincey, Winchester Place, Southwark, Hat Manufacturer. *Bell*, Off. Ass.; *Parker*, 6, Lincoln's Inn Fields. Nov. 26.
- Harrold, George, late of Trevallyn, near Launceston, Van Dieman's Land, now of Birmingham, Merchant. *Valpy*, Off. Ass.; *Ryland & Co.*, Cherry Street, Birmingham. Dec. 13.
- Harwar, Joseph, Charlotte Street, Bloomsbury, Pianoforte Manufacturer. *Edwards*, Off. Ass.; *Willis & Co.*, 6, Tokenhouse Yard. Nov. 29.
- Hasleden, James, Bolton-le-Moors, Lancaster, Cotton Spinner and Manufacturer. *Fraser*, Off. Ass.; *Milne & Co.*, Temple; *Winder & Co.*, Bolton. Nov. 26.
- Henderson, William, Sunderland, Durham, Mercer and Draper. *Baker*, Off. Ass.; *Brown*, Sunderland; *Moss*, 4, Cloak Lane. Nov. 29.
- Hodgson, Thomas, Manchester, Calico-printer. *Hobson*, Off. Ass.; *Abbott*, 10, Charlotte Street, Bedford Square; *Bennett & Co.*, Princes Street, Manchester. Dec. 20.
- Humble, John, Assett, near Wakefield, York, Manufacturing Chemist. *Fearn*, Off. Ass.; *Gregory & Co.*, Bedford Row; *Wavell*, Halifax; *Courtesy*, Leeds. Nov. 26.
- Ibbotson, Mathew, and John Ibbotson, Rivelin Paper-mill, Ecclesfield, York, Paper Manufacturers. *Freeman* Off. Ass.; *Tattershall*, 9, Great James Street; *Marshall*, Sheffield; *Blackburn*, Leeds. Nov. 29.
- Johnson, James, 6, North Place, Gray's Inn Lane, Apothecary. *Johnson*, Off. Ass.; *Lindsay & Co.*, Cateaton Street. Nov. 26.
- Keevil, William, 4, Cornwall Place, Holloway, Grocer. *Turquand*, Off. Ass.; *Scargill*, Hatton Court, Threadneedle Street. Dec. 3.
- Ketcham, Isaac, formerly of St. John's, New Brunswick, (late of London, but now Liverpool,) Merchant. *Casnovie*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Miller & Co.*, Liverpool. Dec. 3.
- King, Samuel, Newgate Street, Warehouseman. *Graham*, Off. Ass.; *Linklaters & Co.*, Lendenhall Street. Dec. 20.
- Ladson, James, Ramsgate, Carver and Gilder. *Green*, Off. Ass.; *Yates*, Bury Street, St. Mary Axe. Dec. 3.
- Libbie, Samuel, Stratton Saint Mary, Norfolk, Innkeeper. *Edwards*, Off. Ass.; *Abbott*, 2, Rolls Yard, Chancery Lane; *Day*, Norwich. Dec. 13.
- Mackay, James, Liverpool, Merchant. *Turner*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Miller & Co.*, Harrington Street, Liverpool. Dec. 6.
- Maidstone, Caroline, King's Parade, Cambridge, Milliner and Dress Maker. *Bell*, Off. Ass.; *Robinson*, Half-Moon Street, Piccadilly. Dec. 10.
- Marshall, Robert, 6, Pleasant Row, High Street, Deptford, and of Upper Road, Deptford, Stone Mason. *Groom*, Off. Ass.; *Tyler & Co.*, 7, South Square, Gray's Inn. Nov. 29.
- Martin, Josiah, 229, High Street, St. Leonard, Shoreditch, Tallow Chandler. *Johnson*, Off. Ass.; *Walters*, Basinghall Street. Dec. 10.
- Meugens, Peter Joseph, 43, Dunster Court, Mincing Lane, Broker. *Edwards*, Off. Ass.; *Nicholson & Co.*, 23, Throgmorton Street. Nov. 26.
- Moutrie, James, Bristol, Music Seller, and Dealer in Musical Instruments. *Green*, Off. Ass.; *Theobald*, Furnival's Inn. Dec. 20.
- Needham, Elias the younger, Little Haughton, Clogger and Currier. *Hobson*, Off. Ass.; *Johnson & Co.*, Temple; *Needham*, 48, Pall Mall, King Street, Manchester. Dec. 10.
- North, John, late of 67½, Whitechapel Road, and now of Maps Row, Stepney Green, Licensed Victualler. *Pennel*, Off. Ass.; *Yonge & Co.*, Tokenhouse Yard. Nov. 29.
- Notman, William, 29, John Street, Tottenham Court Road, Piano-forte Maker. *Turquand*, Off. Ass.; *Ward*, Essex Street. Dec. 3.
- Oldham, James, Wood Street, Warehouseman. *Fallett*, Off. Ass.; *Reed & Co.*, 59, Friday Street, Cheapside. Dec. 20.
- Oliver, William, Darlington, Durham, Printer, Publisher, and Stationer. *Wakley*, Off. Ass.; *Allison*, Darlington; *Tilson & Co.*, 29, Coleman Street. Nov. 29.
- Parsons, Samuel, Manchester, Paper Hanger. *Fraser*, Off. Ass.; *Edge & Co.*, Manchester; *Mawse*, New Bridge Street, Blackfriars. Dec. 13.
- Peach, Samuel, Nottingham, Grocer. *Christie*, Off. Ass.; *Maples*, Nottingham; *Motteram*, Birmingham. Dec. 17.
- Pearce, James, Praed Street, Paddington, Carman and Excavator, and Proprietor of Carts to let on Hire. *Groom*, Off. Ass.; *Graeff*, 19, Furnival's Inn. Dec. 3.
- Perkins, William, 2, Common-hard, Portsea, Southampton, Upholsterer. *Bell*, Off. Ass.; *Bull & Co.*, Ely Place. Dec. 3.
- Rees, William and George Edwards, Wells, Somerset, Gardener's Nursery and Seedsmen. *Miller*, Off. Ass.; *Whittaker*, 12, Lincoln's Inn Fields; *Fry & Co.*, Arxbridge; *Robins & Co.*, Wells, Somerset. Nov. 29.
- Rendle, William Skinner, Penzance, Cornwall. *Hernaman*, Off. Ass.; *Hill & Co.*, St. Mary Axe; *Terrell*, Exeter. Dec. 10.
- Roberts, William Kent, Abingdon, Berks, Grocer. *Green*, Off. Ass.; *Wire & Co.*, St. Swithin's Lane. Dec. 3.
- Robinson, Eleanor, and William Robinson, Swinford, Leicester, Bakers. *Valpy*, Off. Ass.; *Mash*, Lutterworth; *Smith*, Bedford Row; *Motteram*, Birmingham. Nov. 26.
- Robinson, Henry, Devonport, Brewer. *Hertzel*, Off. Ass.; *Smith*, Devonport; *Keddie & Co.*, Lime Street; *Stogden*, Exeter. Dec. 3.
- Robson, John Wordsworth, and John Barrow, St. Ann's Place, Limehouse, Patent Pump and Watercloset Manufacturers. *Graham*, Off. Ass.; *Randell*, Bishops Lane. Dec. 6.
- Rose, Thomas, Nursling, Southampton, Brick

Burner and Builder. *Belcher*, Off. Ass.; *Johnson*, Walcot Square. Dec. 10.  
 Sawyer, John, Egham, Surrey, Butcher. *Johnson*, Off. Ass.; *Smith*, Barnard's Inn, Holborn. Dec. 6.  
 Sberaton, George, Hartlepool, Durham, Corn Merchant. *Baker*, Off. Ass.; *Holden*, Kingston-upon-Hull; *Wilson & Co.*, Hartlepool. Dec. 20.  
 Sneezum, Charles, 51, Wynyard Street, Clerkenwell, and of Beckford's Head Public House, 28, Old Street, St. Luke's, Licensed Victualler. *Pennell*, Off. Ass.; *Buchanan & Co.*, 8, Basinghall Street. Dec. 13.  
 Stephen, George, 4, Skinner's Place, Sise Lane, and of 7, William Street, Knightsbridge, Scrivener and Bill Broker. *Pennell*, Off. Ass.; *Cor*, Sise Lane. Nov. 26.  
 Stockley, Richard, Ramsgate, Upholsterer, Cabinet Maker, and Paper Hanger. *Bell*, Off. Ass.; *Llewellyn*, Cook's Court, Lincoln's Inn Fields. Dec. 13.  
 Storey, James, and John Gibb, Liverpool, Ship Chandlers. *Morgen*, Off. Ass.; *Willis & Co.*, Tokenhouse Yard; *Mason*, Castle Street, Liverpool. Nov. 29.  
 Thorley, James, Abingdon Street, Northampton, Glass and China Man. *Groom*, Off. Ass.; *Smith & Co.*, 3, Basinghall Street. Dec. 17.  
 Tomlin, James, St. Michael's Alley, Cornhill, Ship Broker. *Whitmore*, Off. Ass.; *Desborough & Co.*, Sise Lane. Nov. 26.  
 Tucker, Richard, Dean St. Westminster, Farrier. *Follett*, Off. Ass.; *Blackmore*, St. Martin's Place, Trafalgar Square. Nov. 29.  
 Vanderplank, Bartholomew, Love Lane, Woollen Warehouseman. *Whitmore*, Off. Ass.; *James*, 5, Basinghall Street. Nov. 26.  
 Walker, Cecil Sober Taylor, 150, Oxford Street, Artificial Florist. *Belcher*, Off. Ass.; *Ward*, 39, Essex Street, Strand. Nov. 29.  
 Walker, John and Charles White, 8, Jewry Street, Aldgate, Builders. *Groom*, Off. Ass.; *Sles*, Parish Street, St. John's, Southwark. Dec. 3.  
 Wallington, Jacob, Bristol, Painter and Ship Chandler. *Acraman*, Off. Ass.; *Gillard & Co.*, Bristol. Dec. 3.  
 Walter, Michael, 21, Fleet Lane, Farringdon Street, Wholesale Hardwareman. *Pennell*, Off. Ass.; *King*, St. Mary Axe. Dec. 3.  
 Watkins, Hugh Daniel, and James Jones, Manchester, Lead Merchants. *Stanway*, Off. Ass.; *Sale & Co.*, Fountain Street, Manchester; *Reed & Co.*, Friday Street, Cheapside. Dec. 20.  
 Watson, Leonard, Rickmansworth, Herts, Smith and Ironmonger. *Belcher*, Off. Ass.; *Walters*, 36, Basinghall Street. Dec. 17.  
 Watt, Robert, 43, Lime Street, Merchant and Commission Agent. *Graham*, Off. Ass.; *Sharpe*, Verulam Buildings. Nov. 26.  
 White, George Edward, Minster Street, Reading, Tailor. *Graham*, Off. Ass.; *A'Beckett & Co.*, Golden Square. Dec. 3.  
 White, John Cooper, Canterbury, Draper. *Groom*, Off. Ass.; *Sole & Co.*, 68, Aldermanbury. Nov. 26.  
 Willer, Joseph, Windsor, Berks, Licensed Victualler. *Bell*, Off. Ass.; *Parkes & Co.*, Bedford Row. Dec. 3.  
 Williams, Lucy, Oxford, Woollen Draper. *Groom*, Off. Ass.; *Dickson & Co.*, Frederick's Place, Old Jewry. Nov. 29.

Williams, Thomas, Sen., Cardiff, Glamorgan, Iron Founder. *Kynaston* Off. Ass.; *Dalton*, Cardiff; *Perkins*, Bristol. Dec. 3.  
 Worth, Edward Potter, Henley-in-Arden, Warwick, Victualler. *Christie*, Off. Ass.; *Noble*, Henley-in-Arden; *Harrison & Co.*, Birmingham. Nov. 29.  
 Worth, Wm. Alfred, Cock and Crown Public House, Hampstead, Victualler. *Turquand*, Off. Ass.; *Pyke*, Lincoln's Inn Fields. Dec. 17.

## PRICES OF STOCKS.

Tuesday, Dec. 24th, 1844.

Bank Stock div. 7 per Cent. . . . .	909
3 per Cent. Reduced Annuities . . . . .	100½ a ¼
New 3½ per Cent. Annuities . . . . .	103½ a ¼
Long Annuities, expire 5th Jan. 1860 . . . . .	12½ a ¼
Ann. for 30 years, expire 10th Oct. 1859 . . . . .	11½
India Bonds, under 1000L . . . . .	80s. pm.
Bank Stock for account, 14th Jan. . . . .	310
3 per Cent. Cons. for opening, 17th Jan. . . . .	100½ a ¼ ex div.
Exchequer Bills, 1000L 1½d . . . . .	63s. a 6s. pm.
Do. 500L. " . . . .	63s. a 6s. pm.
Do. small " . . . . .	63s. a 6s. pm.

## THE EDITOR'S LETTER BOX.

We are at all times ready to condeman any instance of malpractice, but as the exposure in these pages of the names of parties may be of serious consequences, we require the complaint to be established beyond all reasonable doubt. We can promptly denounce the offence, but we must have clear proof before we specify the offender.

The remarks of "A Subscriber" on the Doctrine of Merger shall be noticed.

A correspondent requests us to ask whether any of our readers can inform him what has become of the collection of *legal manuscripts* made by Sir W. Glynne, Bart., of Ambroeden, Oxfordshire, and which were sold in 1729 (when the estate was disposed of) to a bookseller at Oxford.

We have some recollection of publishing the letter of C. suggesting a penny stamp on bankers' cheques and receipts, and will search out and make known his claim.

The letter on the evils of abolishing arrest and some other communications are unavoidably deferred.

The Legal Almanac, Remembrancer, and *Diary* for 1845 will answer the purpose of our correspondents.

The letter on the Metropolitan Building Act shall appear next week.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, JANUARY 4, 1845.]

—————"Quod magis ad nos  
Pertinet, et noscitur malum est, agnoscitur."  
HOMER.

**REVISION OF THE LAW.**

WEDNESDAY, the 1st of January, 1845, will, if we mistake not, be henceforth an important day in the history not only of conveyancing but of the law. It is not that the alterations which are made by the act called, somewhat unhappily, "An Act to *simplify* the Transfer of Property," are so remarkable, even if they all, according to the language of the thirteenth section, "commenced and took effect from the 31st day of December, 1844," but it must be admitted that they have excited great attention, and that considerable stir has been made by the act in the whole profession, and in this way on the public at large. There can be no better proof of this than that the *Times*, that great organ of intelligence, has thrown open its columns to letters on the intricacies and difficulties of the act, and has not disdained, indeed, to admit a leading article on its text and objects. There have been almost daily suggestions as to it from different members of the profession, some devoted to this particular measure, others calling for some general revision of the statutes. We notice one of these, which appeared on Wednesday last, because we are glad to see some of our own views transferred into the influential columns of our contemporary. We cannot do better than make one or two extracts from this letter. Indeed, it is one of the "signs of the *Times*," that this sort of production is admitted at all into a daily journal.

"You will confer a lasting obligation," says the writer signing himself S. B. C., of Nicholas

Lane, "upon money-loving, time-saving, and lawyer-hating John Bull, if you will follow up the observations of your correspondents by exposing and condemning the reprehensible manner in which bills of the utmost importance in their effect upon commercial and landed interests are hurried through Parliament. Our statute-books are thus abounding with unintelligible clauses and verbal inaccuracies. It is a remarkable and deeply to be regretted fact, that whilst the laws of all other civilized nations are found in a comprehensive and condensed code, as originally enacted, the laws of England are to be read, not in our statute books, but in the voluminous reports of judicial decisions, extending over a period of more than two centuries; and yet the principles of our legislative enactments are perhaps the most perfect of any system of jurisprudence in the world. Acts of parliament are hidden mysteries. That which every subject is not only supposed but bound to know is so involved in doubt and obscurity, that men who have devoted the greater portion of their lives to investigate and expound its meaning often fail to elucidate or explain what that meaning is. So various and conflicting are the decisions upon many of the most important acts of parliament, that days may be occupied in searching out the construction to be given to a sentence of a few lines."

The writer goes on to point out particular evils, and to enlarge on the general subjects of the necessity for a consolidation of our law and a revision of our statutes past, present, and future—topics with which our readers are familiar—observing, by way of reason for these reforms, that "in truth a lawyer of the present day ought to have the strength of Hercules, the eyes of Argus, and the wisdom of Minerva," and then he would sink under the doubts and perplexities arising from mo-

dern acts. But the writer, whoever he may be, does not indulge in mere declamation. He has a specific remedy for the difficulties arising under the new conveyancing act.

"The men to frame statutes for remodelling our system of conveyancing law are not men who stand prominent for forensic talent and judicial wisdom. I am not mistaken when I say that there are few articulated clerks who in the third or fourth year of their studies would not be more capable of drawing a deed than the Lord Chancellor or the Lord Chief Justice. Judges are expounders of principles, not artificers able to form a machine; they know the result of its action when formed, but they cannot construct it. The men who understand how, and who ought to be employed to remodel the laws relating to the transfer of property, are conveyancers, who, in their silent chambers, have plodded through the mysteries and intricacies of the existing labyrinth, and know practically where the path may be cleared and the way shortened, the right end still being attained. Let Government appoint six of the leading conveyancers of the day to frame a general act for simplifying the transfer of property, and there will be no need to have the often-inserted saving clause, 'That this act may be altered or amended in the present session.'"

This has long appeared to us the proper course to be taken. Considerable doubts exist as to the present act, and we do not know indeed how they can be removed without the interposition of the legislature. We have done our best, not to raise, but resolve them; but it is only necessary to read our pages, and almost those of any newspaper, to see that doubts exist. We certainly, then, should be glad to see some body of competent persons, having the confidence of the profession, appointed, who should give us indeed "An act to Simplify the Transfer of Property." When the state of doubt and confusion is once considered in which the transfer of property is now and will be involved, and the immense expense which will follow, it is idle to mention the cost of a commission as an obstacle to its appointment. Let it be remembered, that by one only of the acts of the Real Property Commission, the Fines and Recoveries Act, the expense of the transfer of property was lessened by 100,000*l.* a year. We will venture to say that already the opinions taken from counsel as to the construction of this act, have cost a very considerable sum: and we cannot see the end of it. We hope, therefore, sincerely that some such course as that suggested may be taken; and we

think that it would tend to prevent much confusion, and allay much anxiety, if it were adopted speedily.

There is also another point to be considered. The passing of this act has been made the occasion for a recommendation, coming from several respectable quarters,\* for considerable abbreviation of some of the common forms of conveyances now in use. The profession, at any rate a considerable part of it, is in doubt as to how far they can safely adopt these recommendations: we do not think they are disinclined to do so, but they would feel much more satisfied if they had some decisive authority to guide them in this respect. We shall speedily return to the latter point, of how far the forms may safely be shortened in practice. We much question the expediency of doing so.

## NOTES ON EQUITY.

### LIABILITY OF PARTNERS.

A POWER of attorney was executed by three trustees to a banking firm consisting of three partners, A., B., and C., which empowered them jointly and severally "to receive the dividends and to sell out the stock itself." The power was sent by the bankers to their brokers, who deposited it with the Bank of England. One of the partners (A.) clandestinely sold out the stock, but the firm had credit for the proceeds. The sale was concealed by A., and the value of the dividends for some time accounted for. (B.) was held liable for the stock sold, although the other partner (C.) and one of the persons who had made the deposit had died. The facts of the case were admitted to be similar to those of *Marsh v. Keating*, 8 Bli. 651, and 2 Cl. & F. 250, in which the forgeries of Fauntleroy were involved; but in that case the power of attorney under which the stock was sold was forged. "In the present case," said Lord Langdale, M. R., "the distinguishing and important facts are, that the power of attorney was genuine, and was entrusted to the joint care of three partners. It enabled each to act severally after it was removed from their joint custody and placed in the hands of their joint agent, without special direction,

\* See, among others, "Concise Precedents in Conveyancing, adapted to the Act for Simplifying the Transfer of Property, &c. By Charles Davidson, of the Inner Temple, Barrister. 1844."

or after it was deposited in the proper office, without which the dividends—the receipt of which was the object of the trustees—could not have been received; but it was optional with the bankers collectively whether they would accept the power and assume the responsibility. They did assume it, as it appears to me, in the ordinary course of business; having done so, and having sent it to their broker, to be acted upon in the way most suitable to their own convenience, I am of opinion that they all became answerable for the several acts of each other under the power, and I think that all the partners would have been answerable for the sale under the direction of A., even if the money had not been paid to the account of the firm with the London bankers. Under these circumstances, it is less important to consider whether the surviving partner ought to be deemed to have known the facts which are now established; but I am of opinion, upon the evidence produced, if he had used ordinary diligence and attention in the management of the business, he might and must have discovered all the facts which are material to this case: the means of knowledge appear to me to have been in his power. In such a case as this, and under such circumstances, a court of justice, for the protection of those who deal with partnerships, must impute the knowledge which the partners, acting for their interests and in discharge of their plain duty, might and ought to have obtained.” *Sadler v. F. Lee*, 6 Bea. 324.

#### IMBECILE PARTNER.

In the same case, it was attempted to discharge a partner from liability, on the ground that he was, although he attended at the bank, incapable of investigating or understanding the state of its affairs. “The evidence upon this subject is by no means satisfactory. If it were much stronger than it is, I own that I could not conclude from it that a man ostensibly taking an active part in the conduct of such a business could be held free from responsibility in respect of the acts of the firm in which he was a partner. Confirmed and incurable insanity is a ground for dissolving a partnership; but I apprehend that before a decree can be made that a partnership shall be dissolved on this ground, it must be shown, not merely that the party alleged to be insane is not for the time so capable as he may previously have been of attending to or con-

ducting the business, but that he is really insane: if not, the partnership cannot be dissolved on this ground, and his responsibility continues.” *Per Lord Langdale*, 6 Bea. 331. And see *Kirby v. Cuen*, 3 Yo. & Col. 184.

#### WIFE'S EQUITY.

It has been recently held by Sir K. Bruce, V. C., that a married woman can waive her equitable right to a settlement out of a fund in court, to which she has been declared entitled, although the clear amount payable in respect of such fund has not been ascertained. *Packer v. Packer*, 4 Coll. 92.

#### ANSWER BY FOREIGNER.

It has also been held by the same learned judge that it is not necessary that the answer of a foreigner should be in his own language. *St. Katherine's Dock v. Mantzgu*, 1 Coll. 94.

#### O'CONNELL v. THE QUEEN.

The Quarterly Review, just published, says, “We confess, with all our confidence in the Lord Chancellor, our admiration of the great sagacity of Lord Brougham, and our respect for Lord Wharnccliffe, and with a full appreciation of the high and generous motives which prompted their advice in the House of Lords on this occasion, we have considerable doubts as to its soundness in point of constitutional law; and we suspect that if they had had more time for deliberation, (it was the last day of the session,) and that the case had not been one from which they were so sensitively anxious to exclude all possible suspicion of partiality, they would have come to a different conclusion.”

Our readers will remember that we expressed the same opinion as the Reviewer. We shall hereafter notice the reasons for the opinion given in the Quarterly Review on this all-important constitutional question.

#### LECTURES AT THE INCORPORATED LAW SOCIETY.

BY MR. CAYLEY SHADWELL.

#### TRANSFER OF PROPERTY ACT.

MR. SHADWELL, on commencing his 4th Lecture, again adverted to the 5th section of the 7 & 8 Vict. c. 76, and observed, that in enumerating the arguments which he thought tended to prove that a married woman was in-



tended to be included, he had laid a good deal of stress upon those words of the clause which enable any person to convey any contingent or executory interest in *personal* property; because, unless those words applied to the case of a married woman they had no meaning whatever, and were mere surplusage, inasmuch as by the law as it previously stood, any person *sui juris* might convey any contingent or executory interest in *personalty*. That was his argument, and upon the words of the act it struck him as a very strong one. It had however been suggested to him, that the words giving the power of conveying a contingent or executory interest in *personal* property, were not intended to apply to the case of a married woman, but to the case of a voluntary assignment without valuable consideration of an equitable interest in *personalty* where the gift was imperfect. He would explain his meaning on this point by the statement of a case, and for that purpose would take one of the late cases on the subject, and one that was decided by Lord Chancellor Cottenham. The case was *Edwards v. Jones*, 1 Mylne & Craig, 227, and the facts were these:—

John Williams being indebted to Mary Custance 300*l.*, gave her a bond for securing that sum with interest. The bond remaining unpaid, Mary Custance, a few days before her death, signed an indorsement on the bond to the effect that she did thereby assign the within written bond and all her interest therein, to her niece Esther Edwards, with full power to sue for the same, and when she had signed this indorsement she delivered the bond to Esther Edwards.

And the question in the cause was, whether the proceeds of the bond belonged to Esther Edwards or to the executor of Mary Custance, and it was decided that it belonged to the executor. One of the points attempted to be made for Mary Edwards was, that the indorsement, though voluntary and without consideration, was yet a good assignment as a transaction *inter vivos*; but the court was clear that this was not so. The Lord Chancellor said, that the rule that a court of equity will not aid a volunteer to carry into effect an imperfect gift had been established by many decisions, and he further said, "That the other rule, 'That if there be a trust created, and the relation of trustee and cestui que trust once constituted, the court would execute the intention,' would not apply to a case like this; for it could not be said that Mary Custance had constituted herself a trustee for Esther Edwards. She had not declared herself a trustee, nor was that mode of doing what she proposed in her contemplation; she says she means gift—she says she assigns the property; but it was a gift not complete. The property was not transferred by the act. Could she herself have been compelled to give effect to the gift by making an assignment? There is no case in which a party has been compelled to perfect a gift, which in the mode of making it he has left imperfect. There is *locus penitentie* as long as it is incomplete." This was the reasoning

of the Lord Chancellor, and the judgment was in favour of the executor.

Mr. Shadwell then referred to the following cases relating to a voluntary assignment of equitable interests in *personalty*. *Coleman v. Sarrell*, 1 Ves. jun. 50; *Ellison v. Ellison*, 6 Ves. 656; *Ex parte Pye*, 18 Ves. 140; *Andrews v. Smith*, 12 Ves. 39; *Beaton v. Beaton*, 12 Sim. 281; *Tuffnell v. Constable*, 8 Sim. 69; *Colyear v. Countess of Mulgrave*, 2 Keen, 81; *Collinson v. Patrick*, 2 Keen, 123.

It was sufficient for his present purpose to advert to the fact that there are some cases of voluntary assignments of equitable interests in *personal* property which, previous to the passing of the Transfer of Property Act, a court of equity would not give effect; and it had been suggested that it is to these voluntary assignments that the words in the 5th section, giving any person a power to convey executory interests in *personal* estate, were to be intended to apply, and not to the case of married women. It might be so, but if it was so, it was attributing to the legislature quite as singular an intention as that of enabling married women to dispose of their future interests in *personalty*; and there was as much interference with the established doctrine of courts of equity in one case as in the other. It was quite as clearly established that courts of equity would not enforce voluntary assignments of *personalty*, where the relation of trustee and cestui que trust had not been established, as it was that they would not enforce assignments by married women of their future interests in *personalty*.

Whether, therefore, these voluntary assignments were or were not what the legislature had in view when they gave the power of conveying any contingent or executory or other future estate or interest in *personal* property, he could hardly venture to form an opinion: he gave the suggestion as he received it, as adding one more to the list, already too long, of the doubts to which this section was liable;—dismissing it with the observation, that if these assignments were intended, the argument in favour of extending the clause to the case of a married woman was to that extent weakened.

Still keeping to the 5th section of the statute, he would give his view of what *practical* alteration of the law was intended to be made by giving the power of conveying a right of entry for condition broken.

By a lease, the right of entry for condition broken was usually reserved to the lessor, his heirs, or assigns. As long as the condition,—the payment of rent, the doing of the repairs, the insuring, or whatever else it might be,—remains unbroken, the right of entry was incident to, and went with, the reversion expectant on the determination of the lease; and if the lessor conveyed his reversion to a stranger, and after that conveyance had been executed the condition was broken, the stranger as assignee of the lessor, might enter for the breach. But supposing the breach of condition to be made first, and then after the breach had been made,

the lessor to convey the reversion to a stranger, in that case, as the law stood, the stranger, as assignee, could not enter for the breach which had been made previous to his purchase; and it was this particular point of the law which, as he understood it, it was the object of this part of the statute to alter.

Forfeiture of a lease, particularly if improvements had been made upon the property by the tenant, must almost always be felt to be a harsh proceeding, and it might have been urged that it was some mitigation of this severity that upon a change of landlord all former causes of forfeiture were waived, and that a new landlord could not put an end to a lease for an old breach. The law, however, was now altered, and as soon as this statute should come into operation, a conveyance of land out upon lease would carry to the purchaser, along with the estate, the right of entering upon the estate for any breach of the conditions of the lease which happened during the ownership of the vendor.

The 8th section also enabled persons to convey by deed contingent or executory interests, or other future estates or interests, in copyholds, and this was a part of the act on which many grave questions might arise. Hitherto the established and ordinary method of conveying the legal estate in copyholds had been by surrender and admittance. The equitable estate indeed in copyholds had been assignable by deed, but as to the legal estate, the only instance, previous to this statute, of a deed being permitted to operate on copyholds was that of a release by one of two copyholders holding in joint tenancy to the other. Such a release might be by deed, but this he believed was the only exception to the general position that the legal estate of the copyhold passed only by surrender and admittance. The statute gave to a contingent remainder-man, or executory devisee, the power of selling, mortgaging, or otherwise disposing of his interest by deed. This must necessarily be applicable to a legal contingent remainder, or legal executory devise; for as to equitable estates of that nature, he had the power of disposing of them by deed before. The lords of manors, and their stewards must be prepared for the questions that would arise upon this change in the mode of disposing of these interests, and for the consequent diminution of their fines. To illustrate this by a case that must not unfrequently occur. Suppose a devise of copyholds to a father for life, with remainder to each of his children as should be living at his death, and their heirs. As it was possible that the father should survive all his children, these remainders to the children were, during their father's life, contingent remainders; but as, though this was possible, it was not probable, particularly if there should be a large family, (seven or eight children,) the children, when they came of age, would find little or no difficulty in selling their remainder in fee, and this sale they would now make to the purchaser by a deed under this 5th section of the statute.

But what effect would this transaction have

upon the lord's fine? The fine on alienation which, on a transaction of this kind by the old law, the lord would have been clearly entitled to, previous to the admission of the purchaser, he would, by the operation of the statute, be entirely deprived of; for the purchaser did not want the admission to make him complete tenant of the copyhold, that complete tenancy of the copyhold had been given him by the deed operating under the statute. When the remainder came into possession, the lord on the admittance of the purchaser, who by the act is placed in the situation of the remainder-man would receive from the purchaser, the fine, if there was one, which would have been due from the remainder-man if admitted, but he would not receive what under the old law he would also have been entitled to, the fine on alienation.

Looking at the wording of the section, it seemed as if the legislature were determined that their new method of conveying copyhold interests by deed should have this extensive and somewhat singular effect; for after the words "that any person may convey, assign, or charge, by any deed, any such contingent or executory interest, or other future estate or interest in copyhold land," the section went on, "And every person to whom any such estate, right, or interest shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the estate, right, or interest, shall be entitled to stand in the place of the person by whom the same shall be conveyed and assigned, his heirs, executors, administrators and assigns, and to have the same estate, right, or interest, as shall be conveyed or assigned to him, and the same actions, suits and remedies for the same as the person originally entitled thereto, his heirs, executors, or administrators, would have been entitled to if no conveyance, assignment, or other disposition had been made."

Considering the great value in some manors, of the amount of fines on alienation, amounting sometimes to as much as two years' improved value of the lands, it seemed extraordinary that the legislature should not have provided for the case of the lord's fine. It appeared, however, to the lecturer to be the meaning of the act, that on the sale of a contingent interest the lord would be deprived of his alienation fine. They must be prepared, however, for attempts on the parts of copyhold tenants to push the operation of the statute against the lord much further than this. It would be said that the 5th section was not confined to contingent or executory interests, but extended also to vested remainders or reversions, for that after contingent or executory interests, the statute went on to say, "or other future estate or interest," and that those latter words were large enough to contain, and did contain, reversions and vested remainders. If this construction were to prevail, the loss to the lord would be very considerable when it was remembered what a large proportion of landed property was held under wills and settlements, in

which the interest was divided into estates for life and estates in remainder or reversion, and how easy it would be, where it was intended to sell the whole interest, to make it appear as if there had been a sale, first of the remainder and then of the estate for life, so as by the operation of the statute to elude the alienation fine. This construction, therefore, that the words "other future estate or interest" included vested remainders, would no doubt be strongly contended for, should the statute be permitted to remain without legislative alteration; it would be contended for, but whether it would prevail was a different question, for when a court saw to what inconveniences holding those words, "other future estate or interest," to include a vested remainder would lead, it would strongly incline to construe those words to mean such other estate or interest as those previously mentioned, (that is to say,) of a contingent or executory nature. And for this confined construction one argument would be, that for the conveyance of vested remainders or reversions, the aid of the statute was not required; as these, in contradistinction to contingent interests, might by the old law be conveyed by surrender and admittance.

#### NOTICES OF NEW BOOKS.

*A Treatise on Presumptions of Law and Fact, with the Theory and Rules of Presumptive or Circumstantial Proof in Criminal Cases.* By W. M. BEST, A. M., LL.B., of Gray's Inn, Barrister-at-Law. London: S. Sweet, 1844. Pp. 391.

THIS is a very interesting and learned work. It is divided into three parts: treating 1st, of Presumptive Evidence and Presumptions in general; 2ndly, of particular Presumptions of Law and Fact; and 3rdly, of Presumptive Proof in Criminal Cases.

The subjects of the First Part are—1. Of proof, evidence and presumptions of law, fact, and mixed law and fact; 2. Presumptions of law and fictions; 3. Presumptions of fact and mixed presumptions; 4. Conflicting presumptions.

Those of the Second Part are—1. Presumptions against ignorance of the law, &c.; 2. That all things are presumed to have been done rightly; 3. Presumptions from possession and user; 4. Presumptions derived from the course of nature; 5. Presumptions drawn from habits of society, usages, &c.; 6. Presumption of the continuance of things in the state they once existed; 7. Presumption in disfavour of the spoliator; 8. Presumptions derived from the general character, disposition, and

conduct of the parties to judicial proceedings; 9. Proof of handwriting; 10. Presumptions in international and maritime law; 11. Miscellaneous presumptions.

The Third Part comprises—1. Theory and rules of presumptive proof; 2. Examination of some of the principal species of presumptive proof in criminal cases.

Some recent cases turning on *evidence of handwriting*, induce us to select part of Mr. Best's chapter on that subject, which will afford a good specimen of his work. He first states the different forms of proof by resemblance, viz.—1. By having on former occasions observed the letters traced by the person whose handwriting is disputed; 2. By having carried on a written correspondence with him, or having had other opportunities of observing writing which there is reasonable ground for presuming to be his; 3. By comparison of the document in question with other documents known or admitted to be the handwriting of the party. The general rule is, that hand writing based on comparison or collation is not receivable, but there are exceptions to the rule which are thus pointed out by Mr. Best:—

"There are several exceptions to the rule excluding proof of handwriting by comparison: the first of which is, that it is competent for the court and jury to compare the handwriting of a disputed document with any others which are in evidence in the cause, and admitted or proved to be in the handwriting of the supposed writer.<sup>a</sup> The reason of this exception is said to be that the documents being already before the jury prevent their mentally instituting such comparison would be impossible."

Another exception has been established in regard to *ancient documents*:—

"When a document is of such a date that it cannot be reasonably expected to find living persons acquainted with the handwriting of the supposed writer, either by seeing him write, or holding correspondence with him, the law, acting on its maxim, '*Nemo cogitur ad impossibilia*,' allows other ancient documents, proved to have been regularly preserved and treated as authentic, to be compared with the disputed one.<sup>b</sup> It is not easy to determine the

<sup>a</sup> *Griffith v. Williams*, 1 C. & J. 47; *Doe d. Perry v. Newton*, 5 A. & E. 314; 1 N. & P. 115; *Solita v. Yarrow*, 1 R. & Rob. 133; *R. v. Morgan*, Id. 134, n.; *Allport v. Meek*, 4 C. & P. 267; *Bromage v. Rice*, 7 C. & P. 548; *Waddington v. Cousins*, Id. 596.

<sup>b</sup> *Phill. Ev.* 701, 8th ed.; *Roe d. Brune v. Rawlings*, 7 East, 282; *Doe d. Tilmann v. Traver*, R. & M. 143; *Doe d. Mudd v. Suckermore*, 5 A. & E. 703; *Eaton v. Jervis*, 8 C. & P. 273.

precise degree of antiquity sufficient to let in evidence of this nature. In *Roe d. Brunev. Rawlings*,<sup>c</sup> the supposed writer had been dead about sixty years; and in *Doe d. Tilman v. Tarver*,<sup>d</sup> the writing was ninety-three years old. But whether, in such a case, the proper course is first to show the specimens to the witness, in order that by studying them he may acquire a knowledge of the handwriting, and then, laying the disputed document before him, ask him if he thinks the handwriting in it the same; or whether he is to be told to make a direct comparison between them in the first instance, is a point not clearly settled. In the case of *Sparrow v. Ferrant*,<sup>e</sup> Holroyd, J., is reported to have laid down, that, in order to make ancient signatures available for this purpose, a witness should be produced who is able to swear, from his having examined several of such signatures, that he has acquired a knowledge of the handwriting, so as to be able, without an actual comparison, to state his belief on the subject. Subsequent to this, however, came the case of *Doe d. Tilman v. Tarver*,<sup>f</sup> which was an action of ejectment, tried in 1824, where, in order to prove that a place called Yard Farm was part of a certain manor, a paper was put in evidence, intitled 'An account of H. E., (who appeared by the books to have been steward of the manor at the time), receiver of the ground-rents for Lady F., for two years ending at Michaelmas, 1727,' which contained an entry relative to Yard Farm. In order to prove the handwriting of E. H., Lord Tenderden, says the report, directed the person producing the paper to compare it with the handwriting of E. H. in other papers belonging to the manor, and to say whether he believed them to be by the same person: and his Lordship added that this course had once been adopted by Lawrence, J. The observation of Lord Denman on this case, in *Doe d. Mudd v. Suckermore*,<sup>g</sup> that it does not distinctly appear from the report, whether the comparison was made with a standard formed in the mind of the witness by an inspection of the papers produced, or whether a direct comparison was made in the first instance, seems well founded. Indeed, no objection as to the mode of putting the question seems to have been raised by the counsel on either side."

Our author then enters upon the consideration of the evidence of persons *skilled* in handwriting, to prove that the writing in question is *feigned*. He says,—

"In order to *disprove* handwriting, evidence has frequently been adduced of persons who have made it their study, and, though unacquainted with that of the supposed writer, undertake, from their general knowledge of the subject, to say whether a given piece of hand-

writing is in a feigned hand or not. Much difference of opinion has prevailed relative to the admissibility of this sort of evidence. It was received by Lord Kenyon and the Court of Queen's Bench, on a trial at bar, in the case of *Goodtitle d. Revett v. Braham*;<sup>h</sup> but rejected by the same learned judge in the case of *Cary v. Pitt*,<sup>i</sup> saying, that, although he had in the former case received the evidence, he had laid no stress upon it in his address to the jury. Similar evidence was, however, afterwards received by Hotham, B., in *ites v. Cater*,<sup>k</sup> and in the ecclesiastical courts.<sup>l</sup> The leading case on the subject, however, is that of *Gurney v. Langlands*,<sup>m</sup> which was an issue directed to try the genuineness of the handwriting to a warrant of attorney, where an inspector of franks was called and asked, 'From your knowledge of handwriting, do you believe the handwriting in question to be a genuine signature, or an imitation?' This was rejected by Wood, B.; and, on a motion for a new trial, Lord Tenderden said, 'I have been long of opinion that evidence of this description, whether in strictness of law receivable or not, ought, if received, to have no great weight given to it. The other evidence in this case was of so convincing a description, as to produce a verdict satisfactory to the judge; and I can pronounce my judgment much more to my own satisfaction on a verdict so found than if the evidence had been admitted, and produced a contrary verdict; for I think it is much too loose to be the foundation of a judicial decision either by judges or juries.' And Holroyd, J., said, 'I have great doubts whether this is legal evidence; but I am perfectly clear it is, if received, entitled to no weight.' Bayley and Best, J. J., concurring, the rule was refused. A somewhat similar opinion seems to be entertained at Doctors' Commons, where Sir J. Nicholl is reported to have declined the offer of a glass of high power, used by professional witnesses of this kind, to examine the handwriting, and see if the letters were what is commonly termed *painted*; adding, that, in his opinion, the fact of their being painted was not any ground for inferring fraud.<sup>n</sup> This is certainly carrying matters a great way, and further than is usual in courts of common law, which never reject the artificial aid of glasses or lamps, where they can be of assistance in the investigation of truth. The scientific evidence of the nature in question may, in the language of Lord Tenderden, 'be much too loose to be the foundation of a judicial decision,' may be perfectly true, but to declare it *inadmissible*, as an *adminiculum* of testimony, is rather a strong position."

Mr. Best next proceeds to consider the

<sup>h</sup> 4 T. R. 497.

<sup>i</sup> Peake's Ev., App., 34. <sup>k</sup> 4 Esp. 177.

<sup>l</sup> *Sapk v. Atkinson*, 1 Add. Eccl. R. 216; *Beaumont v. Phillips*, 1 Phillim. 78.

<sup>m</sup> 5 B. & A. 330.

<sup>n</sup> *Robson v. Rocks*, 2 Add. E. R. 88, 89. See also *Constable v. Steigel*, 1 Hag. N. R. 61, 26.

<sup>c</sup> 7 East, 282.

<sup>d</sup> R. & M. 143.

<sup>e</sup> 2 Stark. Ev. 517, n. (c) 3rd ed.; Dev. Sp. Ass., 1819.

<sup>f</sup> R. & M. 143.

<sup>g</sup> 5 A. & E. 748.

proof of handwriting by a knowledge acquired by the witness from specimens admitted to be genuine; and after noticing some other cases, he adverts to that of *Doe, d. Mudd v. Suchermore*, 4 Car. & P. 1, which he considers the leading case on the subject.—

"In that case, the question turned on the due execution of a will, and the three attesting witnesses were called. It was supposed that S., one of them, was deceived in swearing to his own attestation, and that, although he had attested a will for the testator, the document produced was a forgery. On his cross-examination, two signatures, purporting to be his, and to have been subscribed to depositions made by him in certain other proceedings, and also sixteen or eighteen signatures, apparently his, were admitted by him to be in his handwriting. The cause lasted more than one day, and on a day subsequent to that of the examination of S., another witness was called, who had no other knowledge of him or of the character of his handwriting than from an examination during the trial of the admitted signatures. This second witness, it is to be observed, was an inspector of powers of attorney at the Bank, whose whole duty was to compare the signatures to powers of attorney with former signatures made by the parties, and who stated that from the inspection he had made of the signatures of S. in the actual case, he was able to form a judgment as to his handwriting on the supposed will. This evidence was objected to as being proof of handwriting by comparison, and as such rejected by Vaughan, J.; and the judges of the Court of Queen's Bench, after hearing the question fully argued, on a rule for a new trial, differing in opinion, proceeded to give judgment separately.

"Lord Denman, C. J., and Williams, J., thought the evidence receivable, and argued as follows:—'Admitting the existence of the rule excluding proof of handwriting by comparison—concerning the abstract propriety of which much doubt might exist—the present case did not fall strictly within it; and a rule so objectionable in principle ought not to be extended by construction or inference. No difference in principle existed between the present case and those of *Stainsbury v. Smith*,<sup>5</sup> *Earl Ferrers v. Shirley*,<sup>6</sup> and others, where witnesses were allowed to form their opinion of handwriting from correspondence, or having casually seen the handwriting of the party. The witness here appeared, not in the light of an ordinary person, (as in *R. v. Cator*,)<sup>7</sup> called on to place the doubtful papers in juxtaposition, and so compare them, but of a scientific individual, called on to give to the jury the benefit of his skill; in which case *Burr v. Harpur*,<sup>8</sup> and the numerous cases relative to the proof of ancient documents, showed that the recency of the period

when his knowledge of the handwriting was acquired could make no difference. But even supposing this evidence were to be considered equivalent to a comparison of handwriting, still the reasons for objecting to it as such would not apply in the present case, for the documents having been admitted by the first witness to be in his hand writing, no collateral issue could be raised upon them; which distinguished the case from that of *Stanger v. Searle*,<sup>9</sup> and brought it within that of *Allesbrook v. Roach*.<sup>1</sup> Patteson and Coleridge, J. J., on the other hand, thought the evidence rightly rejected. It differed from a knowledge of handwriting obtained by correspondence, &c., in this essential point, namely, the *undesignedness* of the manner in which, in the latter case, the knowledge is obtained. In such cases the letters from which the opinion of the witness is formed are letters written in the course of business, without reference to their serving as evidence for a collateral purpose in future proceedings. It was admitted in argument at the bar to have been the uniform practice for many years to reject such evidence as this, and rightly so, for it was in substance a proof of handwriting by comparison; and with respect to the fact of the first witness having admitted the genuineness of the specimens, it would be highly dangerous to allow parties to the suit to be bound by admission of that nature. As to *Allesbrook v. Roach*,<sup>1</sup> it must be considered as overruled by *Doe d. Perry v. Newton*,<sup>2</sup> and with respect to *Burr v. Harper*,<sup>3</sup> the legality of that decision was at least questionable; but it was never brought under review, the verdict having been against the party in whose favour it was made. They considered *Stanger v. Searle*,<sup>9</sup> and *Clermont v. Tulkidge*<sup>4</sup> as authorities in point.

"The court being thus equally divided in opinion, the rule for a new trial was of course discharged; and it may be fairly observed, that, as it has been hitherto the admitted practice to reject this kind of proof, the onus of proving its admissibility, consistently with the received principles of evidence, seems to lie on those who seek to introduce it."

Since this case, two others have occurred to which Mr. Best refers, namely, *Griffiths v. Ivery*, 11 Ad. & El. 322, and *Hughes v. Rogers*, 8 Mee. & Wel. 123. Towards the conclusion of the chapter, the author thus notices the *informative* circumstances affecting all presumptive proof by resemblance:—

"Whatever may be the relative value of the above modes of proof of handwriting when compared with each other, it is certain that all such presumptive proof is even in its best form

<sup>5</sup> 5 C. & P. 196.

<sup>4</sup> 4 Esp. 117.

<sup>6</sup> Fitzg. 195.

<sup>7</sup> Holt, N.P.C. 412.

<sup>8</sup> 1 Esp. 14.

<sup>9</sup> 5 A. & E. 314; 1 Nev. & Per. 1.

<sup>1</sup> Holt, N.P.C. 420.

<sup>1</sup> Ib. 351.

<sup>2</sup> 1 Esp. 14.

<sup>3</sup> 4 C. & P. 1.

precarious, and often extremely dangerous. 'Many persons,' it has often been remarked, 'write alike; having the same teacher, writing in the same office, being of the same family,—all these produce similitude of handwriting, which in common cases and by common observers is not liable to be distinguished. The handwriting of the same person varies at different periods of life: it is affected by age, by infirmity, by habit.' And the two following instances show the deceptive nature of this kind of evidence. The first is related by Lord Eldon, in the case of *Eagleton v. Kingston*, 8 Ves. 476. A deed was produced at a trial, purporting to be attested by two witnesses, one of whom was Lord Eldon. The genuineness of the document was strongly attacked; but the solicitor for the party setting it up, who was a most respectable man, had every confidence in the attesting witnesses, and had in particular compared the signature of Lord Eldon to the document with that of several pleadings signed by him. Lord Eldon had never attested a deed in his life! The other case occurred in Scotland, where, on a trial for the forgery of some bank notes, one of the banker's clerks, whose name was on a forged note, swore distinctly that it was his signature, while to another, which was really his, he spoke with hesitation. Standing alone, any of the modes of proof of which we have treated in this chapter are worth little,—in a criminal case nothing; their real value being as adminicula of testimony."

## THE METROPOLIS BUILDINGS ACT.

*To the Editor of the Legal Observer.*

SIR,—Your correspondent (at p. 149) raises a question as to this act, which may appear, to those who do not look at the act itself, to be of serious moment. He considers that the words of the act in sec. 3 do not include a very large portion of the metropolis—that Bethnal Green, Shoreditch, and also the City of London itself, are omitted.

It is true that numerous parishes, or districts, are not specified by name; but they are not in consequence omitted. I might point out many parishes forming districts under the old, as they will continue to do under the new act, (sec. 70.), which are not specified by name; but the act pursues the plan of forming a circular line, (though not such a line as would be made by compasses,) one half on the north bank, the other half on the south bank, of the Thames, and declares, that the operation of the act extends to *all places* within these boundary lines. The line on the north side commences at the Thames at Fulham, at the exterior boundary line of that parish, extending along the exterior boundary lines of various parishes named in the act down to the exterior boundary line of the parish of Shadwell, which joins the Thames and completes the circle, or circuit, on the

north bank. Bethnal Green, Shoreditch, and the City of London, referred to by your correspondent, are some of the *places* included in this line. On the south bank the line commences at the exterior boundary line of the parish of Woolwich, and ends at the Thames again at the exterior boundary line of the parish of Wandsworth, including, in like manner, *all places* within this line.

In answering the objection of your correspondent, I take advantage of the opportunity of adding a few words respecting this act; and I will call his attention, and the attention of your correspondents, to a difficulty respecting another part of the act which I have heard advanced. The act declares that on the 1st of January, 1845, all the acts mentioned in the schedule A. to the act, except as far as in the schedule is provided, shall be, and are, thereby repealed. The principal act named in schedule A. is the Building Act 14 Geo. 3, cap. 78, and the extent of repeal is stated to be "wholly, except as far as any such act may repeal any act either wholly or partly; and except as to offences committed, penalties incurred, and fees payable, and any proceedings taken or commenced, or which might be taken or commenced, under the said act, on or before the 1st of January, 1845," (and except several other parts of the act,) "and any other part of the said act as far as it is necessary for giving full effect to the respective purposes of such several unrepealed sections."

Now I have heard it contended that the 14th Geo. 3 will be repealed to such an extent that all buildings commenced before the 1st January, 1845, and which, by the new act, are declared not to come within its operation if completed before the 1st January, 1846, can be built without any control either under the old or the new act, unless an offence *had been* committed, a penalty incurred, or a proceeding *had been taken* or commenced in respect of it under the old act, on or before the 1st of January, 1845; and after that date the district surveyor cannot interfere either to stop an irregularity, or to obtain the payment of a fee. This of course could never have been intended, and I think both the real meaning and the grammatical construction of the words, "which might be taken or commenced," is, that with respect to buildings commenced before the 1st January, 1845, and completed before the 1st January, 1846, all such acts *may* be done relating to them as might have been done on or before the 1st January, 1845, when the act became otherwise repealed.

The Metropolis Buildings Act is one which has occupied much time and the attention of many men, legislators, lawyers, architects, surveyors, builders, and others, in its construction. It is the fruit of four or five bills. The first bills were brought forward by Lord Normanby, when Secretary of State for the Home Department. He introduced two or three. Lord Lincoln brought in two, and his lordship has the credit of having matured the measure. The act itself is a full code upon the subject of

building for the metropolis and the extensive suburban towns and villages included in the circle before specified; and there is scarcely any act in the statute book, if there be any, constructed with so much pains as to its arrangement. It has 120 sections, and 12 schedules and tables occupying as much space as the sections.

Many of the clauses will tend greatly to improve the health of the metropolis and its large suburbs, by obliging persons to build good drains to all houses—prohibidding the use of cellars as dwellings—providing for light and air—arranging the width of streets and alleys—providing cesspools, and various other matters in the economy of dwelling houses, necessary for the comfort and health of their inmates.

It is quite impossible in a communication like the present to give even an outline of this important act; but it well deserves the careful perusal of the profession, as without doubt their interference will be frequently required with respect to questions arising out of its introduction.

A

Another correspondent on the same subject, writes as follows:—

SIR,—Your correspondent's construction of this act, (p. 149, *ante*.) is startling, but as I submit, incorrect; the object of the legislature evidently was to include within the operation of the act all the parishes and places between the parishes mentioned and the Thames, and this I contend is effected by the words used. A parish can have no boundaries that are not "exterior," when considered with reference to the parish itself, and that word when used must mean the exterior boundary considered with reference to some other locality, as in this instance, to the River Thames. Had it been intended that the act should apply to the parishes mentioned only, it would have been unnecessary to use the words "exterior boundaries," as the names of the parishes alone would have given effect to that intention. By reading over the several parishes with a map of the environs of London in his hand, your correspondent will see that the names are taken in the order in which they occur from the starting point at the Thames on the west, round the north of the metropolis, and thence to the Thames again on the east, crossing the river, proceeding towards the south to the river again at the west, opposite the point from which the circle was commenced, so that the cities of London and Westminster, and other central districts, must be within the exterior boundaries of the specified parishes, whatever construction be given to those words.

If further confirmation were required, it will be found in the title of the act; in the preamble and the schedule of acts repealed, which did include the districts your correspondent contends are not within the new acts. In the list

of buildings exempted, (Schedule B.), several of which would not be affected, if your correspondent is correct, and in the reference to the Cities of London and Westminster, and Serjeant's Inn, Chancery Lane, sects. 2, 7, 35, 41, and 57.

H. S. F.

## NEW ORDERS IN BANKRUPTCY.

UNDER 5 & 6 VICT. CAP. 116, AND 7 & 8 VICT. CAP. 96.

IT IS ORDERED,

1. That every petition for protection from process, presented to the Court of Bankruptcy, or to any district Court of Bankruptcy, under the provisions of the statutes 5th and 6th Vic., c. 116, and 7th and 8th Vic., c. 96, shall be taken to the chief registrar of the Court of Bankruptcy, in Basinghall-street, or to a registrar of the district Court of Bankruptcy in the country (as the case may be in London or in the country), between the hours of eleven o'clock in the forenoon and two o'clock in the afternoon, who shall file and number such petition; and such chief registrar or registrar shall thereupon allot such petition by ballot, or in rotation, to one of the commissioners in London, or of the district court in the country, where there are two commissioners, and shall forthwith certify to such commissioner the filing of such petition and such allotment to him, which certificate shall be filed with the proceedings, and such petition shall be prosecuted before such commissioner, or before the district commissioner, where there is only one commissioner. Provided always, that any one commissioner, in London or in the country, may, in the absence of any other commissioner, act for him. Provided also, that where a petition shall have been previously filed by the same petitioner, whether such petition shall have been dismissed or not, *the new petition shall be allotted to the commissioner to whom the first petition was allotted.*

2. That the schedule to such petition shall be annexed at the time of filing such petition, and shall be, *mutatis mutandis*, in the form in use under the 5th and 6th Vic., c. 116.

3. That in all cases in which a petitioner shall be in custody, there shall be filed with his petition a certificate from the gaoler of the cause or causes of the detention of the petitioner.

4. Every petitioner shall deliver with his petition an account in writing, in the form set forth in the schedule (marked B No. 1) annexed to the orders, signed by the petitioner, of all his books of accounts and vouchers, and of all his personal estate and effects then in his possession or control, or in the possession or control of any other person by his authority, or in trust for him, and the place or places where the same then are or are believed to be, and whether the same are liable for rent or any other charge, and to whom, by name, and the particulars of demand, in order that such property may be duly ascertained and given up to the official assignee or the messenger, and the said account shall be signed and delivered in duplicate.

5. That one copy of the estate paper, mentioned in the preceding order, shall be forthwith transmitted to the broker appointed by the court, and such broker shall forthwith proceed to appraise the personal estate and effects of such petitioner, and shall make such return as is set forth in the schedule (marked B. No. 2) annexed to these orders.

6. That the warrant of seizure or possession to be granted to the messenger, under any petition, shall be in the same form, *mutatis mutandis*, as that now in use in matters of bankruptcy, and shall be issued in the same manner; but the same shall not be executed without the special direction of the commissioner, or of the assignee or assignees for the time being.

7. That every petitioner shall, immediately after an official assignee shall have been appointed to his estate, deliver over to the official assignee so appointed all moneys, bills, notes, and securities in his possession or power, together with all books of account, papers, and writings relative to his estate and effects.

8. That the protection from process to be given to every petitioner, upon or after filing his petition, shall be called the "interim order for protection," and shall be prepared in duplicate in the form set forth in the schedule (marked C No. 2) annexed to these orders, one copy to be filed with the proceedings.

9. That where a petitioner for protection from process, shall be a prisoner in execution upon any judgment obtained in any action for the recovery of any debt, such petitioner shall, before the granting of the interim order for protection, give such notice to the detaining creditor under such execution as the court in which the petition is presented shall direct, so that such creditor may be heard against the granting of the interim order, and the discharge of such petitioner out of custody.

10. That the order for discharging out of custody (under sec. 6 of 7th and 8th Vic., cap 96) any petitioner being a prisoner in execution, upon any judgment obtained in any action for the recovery of debt mentioned in his schedule, shall be in the form set forth in the schedule (marked C No. 3) annexed to these orders, and shall be prepared in duplicate, one copy to be filed with the proceedings.

11. That the time for making a final order,

unless cause be shown to the contrary, in the matter of each petition, shall be appointed by the commissioner acting in the same; of which time the commissioner shall cause notice to be given ten days at least before the time so appointed, which notice shall be by advertisement in the form set forth in the schedule (marked E. No. 1) annexed to these orders.

12. That the final order shall be made in duplicate, one copy to be filed with the proceedings, and one copy to be delivered to the petitioner.

13. That previous to making any application to the court for any order or orders under sections 28th and 29th of the 7th and 8th Vic., c. 96, the petitioner shall give such notice of the application by advertisement and to the creditors of the petitioner as the court, under the circumstances of the case, shall think fit to direct.

14. That all bills of fees and disbursements of any attorney or messenger for business done under the aforesaid acts shall be taxed by the court in which the petition shall have been filed, or by the taxing master of the Court of Bankruptcy, provided always that no charge shall be made by the messenger for executing the warrant of seizure or possession, unless the execution thereof shall be specially directed by the court.

15. That the fees authorised in the annexed table, and no other, shall be taken in the respective courts.

16. That the several forms set forth in the schedule annexed to these orders shall, *mutatis mutandis*, be used in the respective courts,

CHAS. FRED. WILLIAMS, JOSHUA EVANS, R. G. C. FANE, EDWARD HOLROYD, EDWARD GOULBURN, HENRY J. STEPHEN, EDMUND R. DANIELL, MONTAGUE B. BERE,	} Commissioners.
(Approved.) LYNDHURST, C.	

## COMPLAINTS AGAINST BARRISTERS.

WE last week briefly noticed that the complaint against a barrister of Gray's Inn had been established, according to the judgment of the Benchers of that Society, and they had not shrunk from performing the painful duty of expulsion,—from which decision the party had appealed to the judges.

A charge having been made against a member of Lincoln's Inn, for circulating a table of fees and offering a commission for business, the Benchers instituted an inquiry into the circumstances, but the complaint, as we are informed, has not been established.



## PARLIAMENTARY RETURNS.

## JUDICIAL OFFICERS, AND OFFICERS OF COURTS OF LAW AND EQUITY.

A RETURN to the House of Commons has just been printed of the Salaries, Pensions, Fees, &c., between 5th January, 1842, and 5th January, 1843, exceeding £1,000<sup>l</sup>, and distinguishing the sources from whence they are derived.

The following is extracted from the second head of the account, comprising "Judicial Officers, and Officers of the Courts of Law and Equity:"—

NAME.	OFFICE, PENSION, &c.	AMOUNT per Annum.
	<b>SALARIES.</b>	
	£ s. d.	£ s. d.
Abinger, <sup>a</sup> Lord . . .	Lord Chief Baron of the Court of Exchequer	7,000 0 0
Alderson, Sir Edw. Hall . .	One of the Barons of ditto	5,000 0 0
Bruce, Right Hon. Sir James Lewis Knight <sup>b</sup>	Vice-Chancellor . . . . .	5,000 0 0
Bosanquet, Right Hon. Sir John Bernard . . .	One of the Puisne Judges of the Court of Common Pleas, salary (part of the year)	1,444 8 11
	Retired allowance ditto . . . . .	2,488 17 8
		3,933 6 7
Brougham, William . . .	One of the Masters of the Court of Chancery	2,500 0 0 <sup>c</sup>
	Compensation under 3 & 4 Will. 4, c. 94	725 0 0 <sup>d</sup>
		3,225 0 0
Bicknell, <sup>e</sup> Henry Edgworth	One of the Registrars of the Court of Chancery, salary . . . . .	1,500 0 0
	Compensation . . . . .	350 0 0
		1,850 0 0
Balguy, John . . .	Commissioner of Bankruptcy . . . . .	1,800 0 0
Bere, M. B. . . .	Ditto . . . . .	1,800 0 0
Bedwell, <sup>f</sup> Francis Robert	One of the Registrars of the Court of Chancery, salary . . . . .	1,500 0 0
	Compensation . . . . .	350 0 0
		1,850 0 0
Bunce, James . . .	One of the Masters, Civil side, Court of Queen's Bench . . . . .	1,200 0 0
Bennett, O. . . .	One of the Masters of the Court of Exchequer . . . . .	1,200 0 0
Bowen, <sup>g</sup> T. B. . . .	Commissioner of the Insolvent Debtors' Court . . . . .	1,240 7 8
Burton, Charles . . .	Second Justice Court of Queen's B., Ireland . . . . .	3,725 19 4
Ball, Right Hon. N. . .	Third Justice Court of Common Pleas, ditto . . . . .	3,688 12 4
Brady, Right Hon. Maziere	Chief Baron of the Court of Exchequer ditto . . . . .	4,612 18 8
Blake, Rt. Hon. Anthony R.	Chief Remembrancer of ditto ditto . . . . .	2,769 4 8
Bushe, Arthur . . .	Prothonotary, Court of Queen's Bench, ditto . . . . .	1,411 14 9
Boyle, Right Hon. David	Lord Justice General and President of the Court of Session, Scotland . . . . .	4,800 0 0
Coleridge, Sir John Taylor	One of the Puisne Judges of the Court of Queen's Bench . . . . .	5,000 0 0
Coltman, Sir Thomas . .	One of the Puisne Judges of the Court of Common Pleas . . . . .	5,000 0 0
	Ditto ditto . . . . .	3,555 11 0
Creswell, <sup>h</sup> Sir Creswell	One of the Registrars of the Court of Chancery, salary . . . . .	2,000 0 0
Colville, <sup>i</sup> Edward Dod	Compensation under 3 & 4 Will. 4, c. 94 . . . . .	1,100 0 0
		3,100 0 0
Colville, <sup>j</sup> Edward Dod, Jun.	One of the Registrars of the Court of Chancery, salary . . . . .	1,250 0 0
	Compensation . . . . .	100 0 0
		1,350 0 0
Collier, <sup>k</sup> [Collis] Joseph	One of the Registrars of the Court of Chancery, salary . . . . .	1,800 0 0
	Compensation under 3 & 4 Will. 4, c. 94 . . . . .	1,100 0 0
		2,900 0 0
Croft, <sup>l</sup> Sir Archer Denman	One of the Masters, Civil side, Court of Queen's Bench . . . . .	1,200 0 0
Cancellor, <sup>m</sup> J. H. . . .	One of the Masters of the Court of Common Pleas . . . . .	1,200 0 0
Crampton, Philip C. . .	Third Justice, Court of Queen's B., Ireland . . . . .	3,688 12 4

<sup>a</sup> Since deceased.<sup>b</sup> From the Suitors' Fund.<sup>c</sup> Ditto.<sup>d</sup> From the Suitors' Fee Fund.<sup>e</sup> Ditto.<sup>f</sup> Ditto.<sup>g</sup> Since deceased.<sup>h</sup> For part of the year only.<sup>i</sup> From the Suitors' Fee Fund.<sup>j</sup> Ditto.<sup>k</sup> Ditto.<sup>l</sup> Ditto.<sup>m</sup> Ditto.

NAME.	OFFICE, PENSION, &c.	AMOUNT per Annum.		
	SALARIES.	£	s.	d.
Currey, <sup>a</sup> William . .	Master in Chancery, Ireland . .	2,769	4	8
Curran, William H. .	Commis. of the Insolvent Debtors' Ct. ditto . .	1,846	3	4
Chasey, James . .	Taxing Master in Com. Law Business ditto . .	1,107	14	0
Cockburn, Henry . .	One of the Lords of Session, Scotland . .	3,000	0	0
Cunningham, John . .	Ditto ditto . .	3,000	0	0
Denman, Lord . .	Lord Chief Justice of the Court of Queen's B. .	8,000	0	0
Dowdeswell, J. E. . .	One of the Masters of the Court of Chancery .	2,500	0	0 <sup>o</sup>
	Compensation under 3 & 4 Will. 4, c. 94 . .	725	0	0 <sup>p</sup>
		3,225	0	0
Duckworth, <sup>a</sup> Samuel .	One of the Masters of the Court of Chancery .	2,500	0	0
Davis, <sup>r</sup> Francis Henry	One of the Registrars of the Court of Chan- cery, salary . .	1,800	0	0
	Exchequer Compensation . .	100	0	0
		1,900	0	0
Dwarris, Sir Fortunatus	One of the Masters, Civil side, Court of Queen's Bench . .	1,200	0	0 <sup>a</sup>
	Recorder of Newcastle-under-Line . .	50	0	0 <sup>t</sup>
		1,250	0	0
Daniell, Edmund R. .	Commissioner of Bankruptcy . .	1,800	0	0
Dax, <sup>a</sup> Thomas . .	One of the Masters of the Court of Exchequer .	1,400	0	0
Doherty, Right Hon. John	Chief Justice of the Court of Common Pleas, Ireland . .	4,612	18	8
Ellison, Nathaniel . .	Commissioner of Bankruptcy . .	1,800	0	0
Erskine, Right Hon. Sir Thomas . .	One of the Puisne Judges of the Court of Common Pleas . .	5,000	0	0
Evans, Joshua . .	Commissioner of Bankruptcy . .	2,000	0	0
Farrer, J. W. . .	One of the Masters of the Court of Chancery .	2,500	0	0 <sup>v</sup>
	Compensation under Act 3 & 4 Will. 4, c. 94 .	725	0	0 <sup>w</sup>
		3,225	0	0
Fane, Robert G. C. .	Commissioner of Bankruptcy . .	2,000	0	0
Farran, Joseph . .	Clerk of the Pleas, Court of Excheq., Ireland .	1,384	12	3
Farell, Richard . .	Commis. of the Insolvent Debtors' Ct., ditto . .	1,846	3	4
Fonblanque, J. S. M. .	Commissioner of Bankruptcy . .	2,000	0	0
Forbes, John Hay . .	One of the Lords of Session, Scotland . .	3,000	0	0
Fullerton, John . .	Ditto ditto . .	3,000	0	0
Goulburn, Edward . .	Commissioner of Bankruptcy . .	1,800	0	0
Gurney, Sir John . .	One of the Barons of the Court of Exchequer .	5,000	0	0
Griffith, <sup>x</sup> Edward . .	One of the Masters of the Court of Common Pleas . .	1,200	0	0
Goodrich, <sup>y</sup> R. . .	One of the Masters, Civil side, Court of Queen's Bench . .	1,800	0	0
Gould, Thomas . .	Master of Chancery, Ireland . .	2,769	4	8
Gillies, <sup>z</sup> Adam . .	One of the Lords of Session, Scotland . .	3,000	0	0
	Allowance to make up salary formerly en- joyed by him as a Judge of the Session, Jus- ticiary and Exchequer Courts . .	200	0	0
		3,200	0	0
Holroyd, Edward . .	Commissioner of Bankruptcy . .	2,000	0	0
Horne, <sup>a</sup> Sir William .	One of the Masters in the Court of Chancery .	2,500	0	0
Hossey, <sup>b</sup> Henry . .	One of the Registrars of the Court of Chan- cery, salary . .	1,500	0	0
	Compensation . .	350	0	0
		1,850	0	0
Harris, J. G. . .	Commissioner of the Insolvent Debtors' Court .	1,500	0	0
Henn, <sup>c</sup> William . .	Master in Chancery, Ireland, salary . .	2,769	4	8
	Compensation . .	184	12	4
	Salary late Civil List . .	355	11	0
		3,309	8	0
Hudson, William . .	Taxing Officer in Common Law Business, Ireland . .	1,107	14	0
Hope, John . .	Lord Chief Clerk and President of the Second Division of the Court of Session, Scotland .	4,500	0	0
Ivory, James . .	One of the Lords of Session, ditto . .	3,000	0	0
Jones, <sup>d</sup> W. S. . .	Master on the Crown side, Court of Queen's B. .	1,600	0	0
Jennett, William Thomas	Commissioner in Bankruptcy . .	1,800	0	0

<sup>a</sup> Of this amount, 455*l.* 12*s.* 5*d.* was paid to Mr. Litton, who succeeded Mr. Currey on 31st Oct. 1842.  
<sup>b</sup> From the Suitors' Fund. <sup>c</sup> From the Suitors' Fee Fund. <sup>d</sup> From the Suitors' Fund. <sup>e</sup> Ditto.  
<sup>f</sup> From the Suitors' Fee Fund. <sup>g</sup> Paid by the Treasurer of the borough. <sup>h</sup> From the Fee Fund.  
<sup>i</sup> From the Suitors' Fund. <sup>j</sup> From the Suitors' Fee Fund. <sup>k</sup> Paid from fees. <sup>l</sup> Paid from the Fee Fund.  
<sup>m</sup> Since deceased. <sup>n</sup> From the Suitors' Fund. <sup>o</sup> From the Suitors' Fee Fund. <sup>p</sup> The compensation and  
salary (late Civil List) to be discontinued, on Mr. Heron's ceasing to hold office. <sup>q</sup> Paid out of Fees.

NAME.	OFFICE, PENSION, &c.	AMOUNT per Annum.		
		£.	s.	d.
SALARIES.				
Jackson, <sup>a</sup> Joseph D.	Fourth Justice of Court of Common Pleas, Ireland	..	..	..
Jeffery, Francis	One of the Lords of Session, Scotland	..	..	..
Lyndhurst, <sup>b</sup> Lord	Lord High Chancellor	..	..	..
Langdale, Lord	Master of the Rolls	..	..	..
Lushington, Right Hon. Sir S.	Judge of the High Court of Admiralty	..	..	..
Lynch, <sup>c</sup> Andrew Henry	One of the Masters of the Court of Chancery	..	..	..
Law, W. J.	Commissioner of the Insolvent Debtors' Court	..	..	..
Lefroy, Right Hon. Thomas	Fourth Baron of the Court of Exchequer, Ireland	..	..	..
Lyle, <sup>b</sup> Acheson	Second Remembrancer, ditto	..	..	..
Ludlow, E.	Commissioner of Bankruptcy	..	..	..
Maule, Sir W. R.	One of the Puisne Judges of the Court of Com. Pleas	..	..	..
Methold, <sup>d</sup> H.	One of the Masters of the Court of Com. Pleas	..	..	..
Monro, <sup>e</sup> Cecil	One of the Registrars of the Court of Chancery, Salary	1,250	0	0
	Compensation	100	0	0
		..	..	..
Maconochie, Alexander	One of the Lords of Session, Scotland	..	..	..
Mackenzie, Joshua Henry	Ditto Salary	3,000	0	0
	Allowance to make up Salary formerly en- joyed by him as a Judge of the Session, Justiciary and Jury Courts	200	0	0
		..	..	..
Merivale, J. H.	Commissioner of Bankruptcy	..	..	..
Moncrieff, Sir Jas. Wellwood	One of the Lords of Session, Scotland	..	..	..
Murray, Sir John A.	Ditto ditto	..	..	..
Nicholl, Right Hon. John	Judge-Advocate General	..	..	..
O'Loughlin, <sup>a</sup> Sir Michael	Master of the Rolls, Ireland	..	..	..
Patteson, Sir John	One of the Puisne Judges of the Court of Queen's Bench Salary	5,000	0	0
	Receives in addition, as second Judge of the Court, a termly allowance of £10 or £40 per annum, under the provisions of 6 Geo. 4, c. 84, s. 7.	40	0	0
		..	..	..
Parke, Right Hon. Sir James	One of the Barons of the Court of Exche- quer	..	..	..
Perry, <sup>f</sup> H. J.	Principal Secretary to the Lord Chancellor	..	..	..
Phillips, Charles	Commissioner of Bankruptcy	..	..	..
Park, <sup>g</sup> A. A.	One of the Masters of the Court of Common Pleas	..	..	..
Pennefather, Right Hon. F.	Chief Justice of the Court of Q. B., Ireland	..	..	..
Perrin, Right Hon. L.	Fourth Justice, Court of Q. B., ditto	..	..	..
Pennefather, Richard	Second Baron, Court of Exchequer, ditto	..	..	..
Plunket, Hon. David	Prothonotary, Court of Common Pleas, ditto	..	..	..
Rolfe, Sir R. M.	One of the Barons of the Court of Exchequer	..	..	..
Russell, William	Accountant-General, Court of Chancery	900	0	0
	One of the Masters ditto	600	0	0
	From Brokerage, after deducting £150 paid into Suitor's Fund, under 5 Vict. c. 5, s. 60	2,314	18	2
		..	..	..
Ray, <sup>h</sup> H. B.	One of the Masters of the Court of Common Pleas, and late one of the Prothonotaries	..	..	..
Ross, <sup>i</sup> Right Hon. Sir Geo.	One of the Masters of the Court of Chancery	..	..	..
Richards, Richard	Ditto	..	..	..
Reynolds, <sup>j</sup> H. R.	Chief Commissioner of the Insolvent Debtors' Court	..	..	..
		..	..	..

[The remainder of this List will be given in our next Number.]

<sup>a</sup> Appointed 16 Sept. 1842; and only received 1,159l. 16s. in the year.<sup>b</sup> From the

Suits' Fund.—(This does not include his Lordship's Salary as Speaker of the House of Lords.)

<sup>c</sup> From the Suits' Fund.<sup>d</sup> Derived from Fees.<sup>e</sup> Paid from Fees.<sup>f</sup> From the

Suits' Fee Fund.

<sup>g</sup> Of this amount, 684l. 7s. was paid to the Hon. F. Blackney, who<sup>h</sup> Paid out of Fines, &c.<sup>i</sup> From Fees

succeeded Sir M. O'Loughlin, 27 October, 1842.

<sup>j</sup> recoverable under Lord Hardwick's order, 28 Nov. 1743, and which are stated at length in the Report

of the Commissioners in 1816.

<sup>k</sup> Paid from Fees.<sup>l</sup> From Suits' Fund.<sup>m</sup> From

Suits' Fund.

<sup>n</sup> Paid from Fees.<sup>o</sup> From the Suits' Fund.<sup>p</sup> From the Suits' Fund.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

## ANNUITY.—CONSIDERATION.—DEMURRER.

*Where a party has given his deed and bond to secure an annuity for an immoral consideration, and an action is brought against him upon the judgment entered up on the bond, a court of equity will not interfere to stay the action or compel the delivery up of the securities, inasmuch as the party may plead the illegality of the consideration, which appearing on the face of the securities, is a sufficient defence to the action.*

THIS was an appeal from an order of the Vice-Chancellor of England, allowing a demurrer to a bill. It appeared that the defendant is trustee of a deed of settlement dated in 1832, by which the plaintiff covenanted to secure to Maria Sellers an annuity of one hundred pounds, and to her daughter an annuity of fifty pounds, for their respective lives, on his ceasing to cohabit with Maria Sellers, and withdrawing his protection from her. The plaintiff also gave his bond in 1,000*l.* to secure payment of the first annuity. Judgment was entered up on the bond in Ireland. A separation between the parties took place in 1839, the plaintiff having then married another, whereupon Maria Sellers commenced, through her trustee, an action of debt on the bond judgment. The bill was filed to stay the action and to have the deed and bond delivered up to be cancelled, on the ground of their having been given for an illegal and immoral consideration. The defendant put in a general demurrer, which having been allowed by the Vice-Chancellor, the question was now re-argued on appeal.

Mr. Stuart and Mr. Smythe, in support of the appeal, argued that the plaintiff was entitled to the interference of the court, because he had, when young and inexperienced, been seduced into giving the deed and bond in question in consequence of his cohabitation with the female defendant. The Vice-Chancellor had taken two grounds as his reasons for upholding the demurrer: one, that as the consideration was bad on the face of the deed, the plaintiff could make that a good defence at law without the assistance of the court; and the other, that as the consideration was illegal and immoral, the court would not interfere for either party. The demurrer, however, was a general one, and the bill prayed, as an alternative, protection against the claim for the fifty pounds annuity, if the court thought that the consideration was fatal to the case made with respect to the one hundred pounds. The case

had been likened to that of *Batty and Chester*,<sup>a</sup> but improperly, for in that case the reward was to be paid to the woman for cohabiting with the man, while in the present case it was to be the result of the separation, so that there was every inducement held out to Maria Sellers to become as speedily as possible an honest woman.

Mr. Bethell and Mr. Tripp supported the judgment of the Vice-Chancellor, on the grounds taken by his Honour in delivering it, as above mentioned, and on other grounds stated in the Lord Chancellor's judgment.

The Lord Chancellor said he must take time to look into the authorities. The case accordingly stood over consideration.

His Lordship, in giving his judgment, said he agreed with the Vice-Chancellor that the annuity to Maria Sellers was void on the ground that the instruments securing it, as set forth in the bill, were clearly given for an illegal and immoral consideration; for the deed undoubtedly contemplated future cohabitation. This, however, formed a defence at law, to which the plaintiff in equity must be left, unless there were some special circumstances in the case which took it out of the principle on which the court refused to countenance such applications. The plaintiff in the first place rested his claim to relief on the point of form, that not knowing the contents of the deed which was in the defendant's possession, he could not satisfactorily plead to the action brought by the trustee. The action was however brought on the bond judgment, and the plaintiff at law could, on application to the court, be ordered to produce the instrument. The next objection was, that the annuities were to be secured on the real estate of the plaintiff, and he was not at present possessed, nor at all likely to become possessed of any real estate. If the plaintiff at law failed on the ground of the invalidity of the bond as to this part of the security, there was an end of the matter; and any possible objection to going to trial, arising out of the harassing and vexatious proceedings that might be adopted in consequence of it, was a mere chimera. It had, however, been suggested that the bill ought to be entertained on the ground of the claim made for the annuity of 50*l.* to the daughter, but that was not the object of it, nor consistent with its prayer, for it applied especially to the annuity to the mother, alleging it, on certain specified grounds, to be void, and praying that as respected the mother the deed should be delivered up to be cancelled. There was no separate charge in the bill as against the daughter, nor any interference as respecting her made the subject of any allegation. The prayer was, that the deed and bond might be declared void, and satisfaction entered on the judgment as to the mother's annuity. Throughout the whole of the bill there was not a passage to sustain the charge of illegality as to the annuity to the daughter, nor any prayer that the securities

<sup>a</sup> 5 Beavan, 103.

might be declared void with respect to her, if they could not be declared void as respected the mother. The bill seemed to consider the annuity to the daughter void on the grounds that affected the mother only. His Lordship agreed in the opinion of the Vice-Chancellor, that the demurrer must be allowed, and the bill dismissed, and dismissed with costs.

*Smythe v. Griffin*, 8th November, 1844.

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

### PRACTICE.—AFFIDAVIT.—PROOF OF DEEDS.

*It is not sufficient for an attesting witness to swear that the deed to which his attestation refers was "duly executed according to law," but he must state that it was sealed and delivered by the party executing it.*

THIS was a petition for the transfer of a fund belonging to a married woman to the trustees of her settlement, all parties appearing and consenting. The execution of the settlement was proved by the affidavit of one of the attesting witnesses, who, after stating that it was duly executed according to law by the parties thereto, proceeded to verify the signatures in the usual manner.

*Spence for the petitioner.*

The Master of the Rolls said he could not allow proof of the execution of a deed to be given in so lax a form. The proper course was for the witness to state that the deed was sealed and delivered in his presence; and the court could not allow the ordinary form to be departed from without some good reason.

*Houston v. Dyson*, December 17th, 1844.

### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

### COPYRIGHT.—PIRACY.—INJUNCTION.

*The court will grant an injunction to restrain the publication, on the ground of piracy, of poems in which there is a copyright, notwithstanding they may be published with poems of an immoral tendency, and therefore not entitled to be protected.*

THIS was an application for a special injunction to restrain the publication of the poems of the late Percy Bysshe Shelley, the copyright of which had been purchased by the plaintiff. These poems had been published by the plaintiff in 4 volumes, and nearly the whole of them had been published by the defendant in one closely-printed volume, which was sold at a very cheap rate. The bill charged that in the work published by the defendant fifty of the poems, the copyright whereof was in the plaintiff, were printed.

*Moran*, in support of the motion, said, that

as one of the poems was "Queen Mab," it might be objected that the plaintiff could not claim a copyright in any of the others; but he submitted there was a copyright in each poem, and the plaintiff was therefore entitled to protection in respect of all those which were unobjectionable. *Southey v. Sherwood*, 2 Mer. 435; *Lawrence v. Smith*, Jac. 471; *Murray v. Benbow*, Jac. 474 n.

The Vice-Chancellor granted the injunction. *Moran v. Cornish*, December 17th, 1844.

*Ex relatione.*

### Vice-Chancellor &igram.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

### MORTGAGOR AND MORTGAGEE.—CHATELS REAL.—WIFE'S EQUITY.

*An assignment, by way of mortgage, by the husband, of his wife's equitable chattels real, does not preclude the wife, in a foreclosure suit, from obtaining a provision, by way of settlement, out of the mortgaged premises.*

IN 1833, the defendant Keating, in right of his wife, became equitably entitled to an undivided fourth part of certain leasehold premises, the legal estate of the entirety at that time being vested in one Robinson, another defendant, under the will of the surviving executor of the original testator. In November 1835, Keating and his partner Saner borrowed 2,000*l.* of G. E. Wood, and by indenture of assignment then made between Keating and his wife, of the first part, Saner, of the second part, and G. E. Wood, of the third part, the undivided fourth part of the leasehold premises was absolutely assigned to Wood by way of mortgage, to secure the repayment of the 2,000*l.* and interest. In 1836, Wood assigned the leaseholds to C. Lane, to secure the repayment of 400*l.*, and any further advances, not exceeding 1,200*l.* In 1842, by indenture of assignment made between Wood, of the one part, and Hanson the plaintiff, of the other, all Wood's interest in the premises was assigned to Hanson, in consideration of 800*l.*, subject to Lane's security. By an indenture of April 1843, Lane, in consideration of 1,200*l.*, assigned all his interest in the same premises to Hanson. Hanson filed his bill against Keating and his wife, Saner, and Robinson, stating, *inter alia*, that the annuities charged upon the premises by the will of the original testator had long since ceased, and that the whole of the mortgage money and interest thereon remained unpaid, and praying a foreclosure. The defendant, M. A. C. Keating, by her answer, claimed to be entitled, by way of settlement, to a provision out of the mortgaged premises.

Mr. Bigg, in support of the bill.—The husband had a right to dispose of the wife's term, and she, in fact, assented. No doubt, where the husband assigns the wife's legal or equitable chose in action, it has no other effect than

to put the assignee in the same situation as the husband. But the assignment of the wife's chattel is distinguishable; her right by survivorship is barred; the estate passes to the assignee. As to a chattel real, there is no distinction between the wife's legal and equitable interest. Co. Lit. 46 b., 351 a., Mr. Butler's note, 304, a. 2; Sir E. Turner's case, 1 Vern. 7. S. C. cases in Chancery, before Lord Nottingham: *Pitt v. Hunt*, 1 Vern. 18; *Tudor v. Smythe*, 2 Vern. 270; *Jewson v. Moulson*, 2 Atk. 471; *Burdon v. Dean*, 2 Ves. jun. 607; *Elbank v. Montague*, 5 Ves. 737; *Mitford v. Mitford*, 9 Ves. 101; *Elliott v. Cordell*, 5 Mad. 149; *Purdon v. Jackson*, 1 Russ. 1; *Donne v. Hart*, 2 R. & M. 360; *Stanton v. Hall*, 2 R. & M. 175; *Pierce v. Thorneley*, 2 Sim. 167; *Woodhouse v. Williams*, *Same v. Jones*, V. C. Knight Bruce, April 1842; *Whitaker v. Hall*, 1 Gly. & J. 213.

Mr. Romilly and Mr. Smythe for Mrs. Keating.—The court must follow *Sturgis v. Champneys*, 5 My. & C. 97; *Ehoy v. Williams*, 7 Jur. 337, 12 Law J. N. S. 440.

Mr. Rogers and Mr. Chandless, for the husband, referred to Boper's Hs. & W. i. 286; *Exp. Blagdon re Hearn*, 2 Rose, 249; *Earl of Salisbury v. Newton*, 1 Eden 370; *Orwell v. Probert*, 2 Ves. jun. 680; *Macaulay v. Philips*, 4 Ves. 19; *Franco v. Franco*, 4 Ves. 530.

Mr. Tiney, for Saner; Mr. Simpkinson and Mr. Piggott for Robinson, the trustee.

July 4. Sir James Wigram, V. C., now delivered judgment.—The argument for the defendant, Mrs. Keating, in this case was founded upon the well-established and beneficial rule, that he who seeks equity must do equity. To this rule, properly understood, it is, in all cases, very satisfactory to me to refer, and, by it, to be bound. But as it has been used in the argument in this case, it seems to me to take for granted the question in dispute between the parties, and, of itself cannot by any possibility decide what are the rights of the parties in this case. It only raises the question, what equity (if any) a defendant has against a plaintiff, under the circumstances of the case to which it is sought to be applied. For example: if a party, as plaintiff, seeks an account in equity against a defendant, the court will take such account wholly and not partially, between the parties; and it therefore requires the plaintiff to do equity by submitting himself to account, as the price of obtaining a decree against the defendant, and in order that the subject of the suit may, once for all, be settled between the parties. I may observe, that it is only to the one matter which is the subject of the given suit that the rule is applicable (*Whitaker v. Hall*, 1 Gly. & J. 213); and, unless the court imposed those terms, it would be impossible for the court, as between the parties, to administer the only equity it professes to administer, namely, that of taking and finally settling the whole account. So, in the case of bills for specific performance, the court will give the purchaser his conveyance, provided he will fulfil his part of the contract, by paying his

purchase money. And so, *e converso*, if the vendor were plaintiff, the court would secure to the purchaser the subject of the contract. The court will execute the contract which is the subject of the suit wholly, not partially. So, if a bill be filed by the obligor in an usurious bond, the court will rescind the entire transaction, and remit both parties to their original positions. It will not relieve the obligor from his liability, leaving him in possession of the fruits of the transaction of which he complains. The equity of the court is to rescind the transaction wholly, and not partially. The result, in my opinion, is, that the court can never lawfully impose merely arbitrary conditions upon a plaintiff, only because he is plaintiff; but can merely require him to give the defendant that, which, by the law of the court, independently of the position of the party on the record, is the right of the defendant, as against the plaintiff, in that matter which is the subject of the suit. I do not deny, that the court may rarely, if ever, be called upon to administer some given equity, except as against a plaintiff; but that consideration does not affect the argument. The test to be applied to the question is, whether, if circumstances should give to a defendant, in whose favour terms have been imposed upon the plaintiff, an opportunity of enforcing those terms, he could, in that case, as plaintiff, enforce them? whether the cases which have decided that such terms would be imposed in his favour, if he were a defendant, would not be authorities to support his suit? I entertain no doubt that they would be so considered. (*Lady Elbank v. Montague*, 5 Ves. 737; *Sturgis v. Champneys*, 5 My. & C. 97.) But it was said at the bar that the above opinion, which I intimated during the argument, was opposed to the opinion of Lord Cottenham in the latter case. I do not so understand Lord Cottenham, or I should at once defer to his judgment. But this I do know, that in one of his most elaborate and able judgments (I mean that in *Brown v. Newall*, 2 My. & C. 558), and with equal clearness in *Agabeg v. Hartwell* (not reported) in the House of Lords, he held, that a party loses none of his rights by becoming plaintiff in a suit in equity. In the latter case, the plaintiffs sought an account against the members of the house of Fairlie & Co., in this country. They claimed to be creditors upon the plaintiffs, and the Vice-Chancellor of England, (upon the broad ground that he who would have equity must do equity,) required all the accounts between the parties to be taken. That decree was affirmed by Lord Chancellor Brougham, and therefore went to the House of Lords under every circumstance of disadvantage. The House of Lords investigated the case, with a view to the question, whether, upon all the circumstances of the case, the defendants were entitled to have all the accounts blended; and being of opinion that the defendants had no such equity, the decree was reversed. The question then is, what are the respective rights of the parties in this case?

Sir Edward Turner's case, (1 Vern. 7.) if it be law, answers the question. Now, it is true that some judges have thought the resolution in that case questionable; but it is equally true that they have considered it as binding upon all the courts until the House of Lords should alter its own resolutions. (*Pitt v. Hunt*, 1 Vern. 18; *Jewson v. Moulson*, 2 Atk. 417.) And, unless I am mistaken, Sir Edward Turner's case is considered as good law by conveyancers, and is acted upon accordingly. The more strong the dissent from the resolution, the more do the judges, who dissent from it, affirm its authority, by following it. I believe the understanding of the profession prior to the decision in *Sturgis v. Champneys* to have been, that Sir E. Turner's case was in accordance with the principles of the court; and I advert to that understanding the more, not only because the Vice-Chancellor of England concurs in it, but because I know that Mr. Jacob, down to the close of his valuable life, always lamented the decision in *Sturgis v. Champneys*, as having, in his opinion, unsettled and shaken the law. I will look into the case of *Sturgis v. Champneys*, to ascertain whether the present case is governed by it.

Aug. 3. His Honour stated, that having considered the case of *Sturgis v. Champneys*, he was bound to follow it, although, if it were out of the way, he should have decided differently. He could not allow himself to disregard the reasoning of Lord Cottenham in that case.

*Hanson v. Keating*, July 4 & August 3, 1844.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, ESQ., Barrister at Law.]

#### MANDAMUS TO THE GAOLER OF THE QUEEN'S BENCH.

*The Queen's prison is now substituted for the Queen's Bench and Marshalsea prisons, and its rules and regulations are placed under the control and superintendence of one of the principal Secretaries of State.*

*Where a person had been confined in the Queen's prison for more than 12 months for contempt of the Court of Chancery; and where it appeared from affidavits that the allowance of food made him by the gaoler was not sufficient for his support, and he had no means of his own to support himself; and where it appeared that a memorial had been presented to Sir James Graham without obtaining any redress; the court granted a mandamus peremptory in the first instance, commanding the gaoler to make the prisoner an additional allowance of food.*

Mr. Pashley applied for a mandamus to the keeper of the Queen's prison, to compel him to give a prisoner in his custody an additional allowance of food. It appeared that the prisoner had been committed for a contempt of the Court of Chancery, and had been in prison

more than 12 months. The prisoner has no means of support, nor has he any means of obtaining it, and he cannot subsist on the allowance now made to him. The answer made by the gaoler is, that the orders and regulations of the prison do not permit him to give the allowance now demanded to a prisoner who has been in custody more than 12 months. By the statute 53 Geo. 3, c. 113, a county rate is made for the relief of prisoners confined in the Fleet and Marshalsea prisons, and justices of the peace for Surrey and the city of London are directed to make orders and regulations for the application of that money in relief of the persons in custody. By statute 5 Vict. c. 22, which is an act for consolidating the Queen's Bench, Fleet, and Marshalsea prisons, to be hereafter called the Queen's prison, the power of the justices of the peace is taken away. And by statute 16, it is enacted that the rules for the government and regulation of the Queen's prison shall be made from time to time by one of her Majesty's principal Secretaries of State, who shall subscribe a certificate that such rules and regulations are fit to be enforced, and such rules shall be binding on the keeper of the prison. The power, therefore, of the justices of the peace has been taken away, and the prison is placed under the control of one of the Secretaries of State. Still this court will interfere by mandamus, otherwise he has no other means of redress. A memorial in his behalf has been presented to Sir James Graham, but no answer has been received to it. The court has power to grant this application. In *Rex v. The Lords Commissioners of the Treasury*,<sup>a</sup> it was held that a mandamus lay to the Lords of the Treasury to order payment of an allowance, first because the claimant had no other remedy, and next because the writ was demanded not against the king but against the officers into whose hands the money had been paid under an act of parliament, for the use of an individual. In *Rex v. Payne*,<sup>b</sup> a mandamus lay to the treasurer of a county to deposit certain books, &c. with the clerk of the peace. Lord Denman then said, "It is enough that a public duty is left unperformed by a public officer, in keeping back documents of which he obtained custody in that character." In *Reg. v. Fox*,<sup>c</sup> and *Reg. v. Scott*,<sup>d</sup> where a justice refused to deliver up the dead body of a person who had died while a prisoner in execution in his custody, to the executors of the deceased, unless they would satisfy certain claims made against the deceased by the gaoler, this court issued a mandamus peremptory in the first instance, commanding that the body should be given up to the executors. The court therefore has power to grant a mandamus under circumstances like the present. The rules made for the direction of the gaoler may violate the laws of the land, and the court would then be called upon to interfere by mandamus. [*Coleridge, J.*—It does not appear from the affidavits that Sir James Graham

<sup>a</sup> 4 A. & E. 286.

<sup>b</sup> 6 A. & E. 392.

<sup>c</sup> 2 Q. B. R. 246.

<sup>d</sup> 2 lb. 248.

has refused to answer the memorial that has been presented to him.] It is some time since the memorial was presented to Sir James Graham, and no notice has been taken of it.

Lord Denman, C. J. It would appear that the control over the Queen's prison is taken from the court and given to the Secretary of State. We ought to see that an application has been made to him and what he has done. If power is vested in an officer of the court, I do not say that we will not compel him to do his duty.

Subsequent application was made during the term, so as to leave no doubt that an application had been made to Sir James Graham, but without obtaining any redress.

Lord Denman, C. J.—We think a mandamus ought to be granted peremptory in the first instance.

Williams, Coleridge, and Wightman, J.'s, concurred.

Rule absolute for a peremptory mandamus.

The Queen v. John Long. Michaelmas Term, 1844.

### Queen's Bench Practice Court.

[Reported by E. H. WOOLLEY, Esq., Barrister at Law.]

PRACTICE.—IRREGULARITY.—MOTION TO SET ASIDE PROCEEDINGS.—TIME WITHIN WHICH TO BE MADE.

Where a writ of *fi. fa.* was executed to the amount of the levy paid under protest on the 7th; a motion on the 18th November to set aside the proceedings, on the ground that the defendant had never been served with process in the action, was held too late.

Hence moved to set aside the judgment and subsequent proceedings on the ground of irregularity, the defendant not having been served with any process in the action or received any intimation of the proceedings until the 7th Nov., when a levy took place under a writ of *fi. fa.*, the amount of which was paid under protest. The affidavit in support of the present motion was sworn on the 13th Nov., but in consequence of some informality in it was resworn on the 20th. The question was, whether the application was in time. [Patteson, J.—The rule is, that a party must come promptly. Where a party lies by for eleven days he can hardly be said to come promptly.] In *Fisk v. Palmer*,<sup>a</sup> an application on the 25th to take advantage of an irregularity in declaring too soon, which had occurred on the 7th, was held to be in time. Here there has been no intermediate step.

Patteson, J.—The rule of Hilary Term, 2 W. 4, s. 33, requires that the application should be made within a reasonable time where there has been no intermediate step. Where such a step has been taken it will be a bar to the application, even though it be made promptly. No specific time has been fixed within which such a motion should be made. The question is, whether the present application is made

within a reasonable time, and I am of opinion that the party having lain by for eleven days after he knew of the irregularity, it is not.

Rule refused.

Cook v. Peace. Q. B. P. C. Michaelmas Term, 1844.

### Exchequer.

[Reported by A. P. HURLESTONE, Esq., Barrister at Law.]

(Before Rolfe, B., sitting alone.)

On the return of a writ of trial, the plaintiff may proceed to sign judgment without waiting, as in other cases, for the expiration of four days.

On the 27th of August the plaintiff had obtained a verdict on a writ of trial which was returnable on the 8th of Sept. On the 9th he gave notice of taxation for the following day, and accordingly on the 10th, final judgment was signed.

Montague Chambers moved for a rule to show cause why the judgment should not be set aside on the ground that it was prematurely signed. The plaintiff could not sign judgment until four days after the writ of trial was returnable. *Nicholls v. Chambers*, 2 Dowl. P. C. 693, may seem to be an authority to the contrary, but that case was decided on the 18th section of the 3 & 4 W. 4, c. 42, and the attention of the court was not directed to the 19th section, which enacts that all the provisions of the 1 W. 4, c. 7, so far as the same are applicable, shall extend to judgments and executions on writs of trial. Under the provisions of that act, a rule for judgment was always required until the same was dispensed with by the 67th rule of Hilary Term, 2 W. 4. The word "forthwith" has in several statutes been construed to mean within a reasonable time.

Rolfe, B. The 19th section of the 3 & 4 W. 4, c. 42, only re-enacts such of the provisions of the 1 W. 4, c. 7, as are not met by a contrary enactment. The question seems to me to have been decided by the case of *Nicholls v. Chambers*, and I think that I ought not to grant a rule.

Rule refused.

Gill v. Rushworth. Exchequer, Michaelmas Term, Nov. 3. 1844.

## CHANCERY SITTINGS.

Lord Chancellor.

Hilary Term, 1845.

AT WESTMINSTER.

Saturday .	Jan. 11	Appeal Motions.
Monday . . .	13	Petition-day
Tuesday . . .	14	Appeals.
Wednesday . .	15	
Thursday . . .	16	Appeal Motions.
Friday . . . .	17	Appeals.
Saturday . . .	18	
Monday . . . .	20	
Tuesday . . .	21	
Wednesday . .	22	
Thursday . . .	23	Appeal Motions.



Friday . . . 24	(Petition-day) Unopposed Petitions only and Ap- peals.
Saturday . . . 25	
Monday . . . 27	
Tuesday . . . 28	
Wednesday . . . 29	Appeals.
Thursday . . . 30	
Friday . . . 31	(Petition-day) Unopposed Petitions only and Ap- peals.
	Appeal Motions.

## Master of the Rolls.

Saturday . . . Jan. 11	Motions.
Monday . . . 13	Pleas, Demurrers, Causes, Further Directions and Exceptions.
Tuesday . . . 14	
Wednesday . . . 15	Petitions—The Unopposed First.
Thursday . . . 16	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 17	Motions
Saturday . . . 18	At the Privy Council.
Monday . . . 20	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday . . . 21	Petitions—The Unopposed First.
Wednesday . . . 22	Pleas, Demurrers, Causes, Further Direction, and Exceptions.
Thursday . . . 23	Motions.
Friday . . . 24	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 25	Exceptions.
Monday . . . 27	Petitions—The Unopposed First.
Tuesday . . . 28	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday . . . 29	Exceptions.
Thursday . . . 30	Exceptions.
Friday . . . 31	Motions.

Consent Causes and Short Causes every Tues-  
day at the sitting of the court.

NOTICE.—Petitions must be presented, and copies  
left with the secretary, on or before the Saturday  
preceding the Tuesday on which it is intended they  
should be heard. Those requiring service must be  
presented on or before the Friday preceding.

## Vice-Chancellor of England.

Saturday . . . 11	Motions.
Monday . . . 13	Petition-day.
Tuesday . . . 14	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . 15	
Thursday . . . 16	Motions.
Friday . . . 17	Unopposed Petitions, Short Causes and Causes.
Saturday . . . 18	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Monday . . . 20	Exceptions.
Tuesday . . . 21	Petitions—The Unopposed First.
Wednesday . . . 22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . . 23	Motions.
Friday . . . 24	(Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday . . . 25	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Monday . . . 27	Exceptions.
Tuesday . . . 28	Petitions—The Unopposed First.
Wednesday . . . 29	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . . 30	Motions.
Friday . . . 31	Motions.

## Vice-Chancellor of the Exchequer.

Saturday . . . Jan. 11	Motions and Causes.
Monday . . . 13	(Petition-day) Causes, Pe- titions, and Bankrupt Pe- titions.
Tuesday . . . 14	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . 15	Bankrupt Petns. & Causes.
Thursday . . . 16	Motions and Causes.
Friday . . . 17	Pleas, Demurrers, Excep- tions, Causes, and Fur- Directions.
Saturday . . . 18	Short Causes and Causes.
Monday . . . 20	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday . . . 21	Bankrupt Petitions and Ditto.
Wednesday . . . 22	Motions and Causes.
Thursday . . . 23	(Petition-day) Petitions and Causes.
Friday . . . 24	Short Causes and Causes.
Saturday . . . 25	Pleas, Demurrers, Excep- tions, Causes, and Fur. Direc- tions.
Monday . . . 27	Bankrupt Petitions and Ditto.
Tuesday . . . 28	(Petition-day) Petitions, Short Causes, & Causes, Motions and Causes.
Wednesday . . . 29	Motions and Causes.
Thursday . . . 30	Motions and Causes.
Friday . . . 31	Motions and Causes.

## Vice-Chancellor of the Admiralty.

Saturday . . . Jan. 11	Motions and Causes.
Monday . . . 13	(Petition-day) Petitions and Causes.
Tuesday . . . 14	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Wednesday . . . 15	Motions and Ditto.
Thursday . . . 16	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Friday . . . 17	Short Causes and Ditto.
Saturday . . . 18	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Monday . . . 20	Short Causes, Petitions (unopposed first,) and Causes.
Tuesday . . . 21	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Wednesday . . . 22	Motions and Ditto.
Thursday . . . 23	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Friday . . . 24	Short Causes, Petitions (unopposed first,) and Causes.
Saturday . . . 25	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Monday . . . 27	(Petition-day) Petitions and Causes.
Tuesday . . . 28	Motions and Causes.
Wednesday . . . 29	Motions and Causes.
Thursday . . . 30	Motions and Causes.
Friday . . . 31	Motions and Causes.

## THE EDITOR'S LETTER BOX.

WE much regret to find that the names of  
Messrs. Richard Attwood and J. W. Hewitt  
of Fareham, Attorneys and Solicitors, were put  
under the head "Bankruptcies Succeeded,"  
instead of, as should have been the case, under  
the head of "Partnerships Dissolved."

We will consider the suggestions of "Lex,"  
and are obliged by his communication.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

[ SATURDAY, JANUARY 11, 1845.

—"Quod magis ad nos  
Pertinet, et necesse malum est, agimus."

HORAT.

### THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

THE state of the Appellate Jurisdiction of the House of Lords has for the last ten years engaged the attention of the legislature, and there has been no want of attempts to reform it; and we have no doubt that the particular circumstances under which the great case of *O'Connell v. the Queen* was decided will again direct public attention to it in the approaching session of parliament.

By far the most important point, in a constitutional light, involved in that case, (however important the other points decided by it may be,) is that to which we have already called the attention of our readers,<sup>a</sup> and which we conceive must provoke much discussion, viz., whether the lay lords can and should vote on appeals in judicial matters. It was not to be supposed that this great event (of the lay lords withdrawing from voting) would be allowed to pass by without observation; and we find, in an article in the *Quarterly Review*, just published, on the interesting subject of Ireland, which is ascribed universally to Mr. Croker, some allusion to this matter, which we think it right to notice; on all the other points we abstain from giving any opinion, at any rate for the present.

We cited in our last number the general disapproval of the course taken on the trial; the writer thus continues:—

"In the first place, we will observe, that the

overruling the advice of the judges, though undoubtedly within the discretion of the House of Lords, is a rare and exceptional proceeding. In a celebrated case, *Reese v. Long*, on a certain point of law, the Lords, moved by the hardship of the individual case, reversed the judgment of the court below, contrary to the opinion of all the judges; but the House of Commons, in reproof of this assumption of legislative authority in the Lords, immediately brought in the 10 & 11 Wm. 3, which passed into a statute, (2 Blackstone, 170, note.) Blackstone says that the House of Lords are attended by the common law judges for their advice in point of law, and that they have their regular writs of summons, *ad tractandum et conciliium impendendum*, though not *ad consentiendum*. The judges, therefore, and not some accidental number of peers who happen to have been called to the bar, are the proper and constitutional guides of the House of Lords in matters of law. Neither the constitution of the country nor the practice of the House of Lords acknowledge anything like an *imperium in imperio* of law lords. There have frequently been no law lords attending parliament, and there is no obligation on them to attend. Three of those so designated—Lords Wynford, Plunket, and Langdale—did not attend on the late occasion, if they had the result might have been different. Sometimes—as so lately as 1836—there is not even a Chancellor; and everybody knows that Lord Denman was Chief Justice, and Lord Cottenham First Commissioner of the Great Seal, without being peers."

There is much force in this argument. During a great part of Lord Eldon's chancellorship, and in the present century, there were only himself and Lord Redesdale; and at one period, neither of these learned persons. But Sir William Alexander, C.B., and Sir John Leach, M.R., presided without a vote. If, then, the

<sup>a</sup> See 28 L. O., 405, and *ante*, p. 6.

appeal business of the Lords was to be disposed of exclusively, and as a matter of right, by the law lords, it might happen that no law lord might be present at all, or indeed be in existence. The writer thus continues:—

“In ordinary cases, and when the judges are not specially summoned, it is delicate and usual for lay lords to acquiesce in the decision of the law lords; but this stands on a principle directly adverse to the pretension in the present case: for the only solid and constitutional ground for the defence is, that when the judges are not present the *law lords are supposed to speak their opinions*. And moreover, in every case which we have been able to trace of a division for supporting or reversing the opinions of the judges, the lay peers have voted. In the celebrated case of *The King v. Horne*, State Trials, xx. 787, there was a division in the Lords, the Duke of Richmond and three others voting against the unanimous opinion of the judges, and eighteen lay lords and two law lords for it. The discretion and propriety of lay lords voting against all the judges may be (and was in that case most justly) questioned; but no one ever doubted the propriety of lay peers voting *with* the judges. We do not presume to censure Lords Denman and Cottenham, or Lord Campbell, for differing from the majority of the judges; it was—if they had a strong, clear conviction the other way—their duty as well as their right; but we much regret that other peers did not exercise the same right, and clearer duty, of maintaining and confirming the authority of those advisers whom the constitution has assigned to them, and who are summoned to parliament like themselves for that especial purpose. \* \* \* The point is surely too important to have been disposed of in so hasty a way. We are quite sure that the doctrine laid down in the first instance in the case, that such matters belong *exclusively* to what are called the law lords—and that without any definition of what a law lord is, or any notice to all law lords to attend—is wholly inconsistent with, and would, if confirmed and sanctioned, be fatal to the jurisdiction of the House of Lords.”

We do not go to this extent; but it certainly appears to us, that if it be the intention to confine the jurisdiction on appeals to the law lords, it will be proper to do so after full discussion and deliberation, and not establish so important a practice indirectly and by a side wind. We are not saying that this would not be the result to which we shall properly arrive; but we do say it is neither the theory nor the practice of the constitution, as now existing, which we have already endeavoured to show at some length.<sup>b</sup>

We wish, however, briefly to call attention to this important fact, that there have been several propositions, coming from highly learned and influential persons, which would go far to give the jurisdiction in this matter to the law lords, with some assistance.

In 1836, Lord Cottenham, then Chancellor, proposed<sup>c</sup> that the House of Lords should sit and hear appeals and writs of error, but no other matters, during the prorogation or dissolution of parliament, and that power should be given to summon the equity judges to give their attendance and assistance, in the same manner as the common law judges are now summoned. Lord Langdale, M. R., at the same time proposed that there should be a “Lord President of the House of Lords in matters of appeal and writs of error;” that certain “Lords Assistant on the matters of appeals and writs of error” should also be appointed; that in case of any arrears, the Crown might, by proclamation, summon the Lords for the purpose only of hearing and adjudicating on such appeals and writs of error. Sir Edward Sugden, in 1840,<sup>d</sup> proposed that the Court of Appeal in the House of Lords should consist of the Lord Chancellor and two judges, to be called Lords President, but not necessarily to be peers; that the Lords President should sit as judges during the hearing, and should openly declare their judgments, but not to have voices if not peers; that where there was any arrears of appeals, the House of Lords should sit to hear them, notwithstanding a prorogation; that the equity judges should be summoned; that the appeals in the Lords should be heard with as many of the forms of superior courts of justice as are consistent with the jurisdiction of the House. Lastly, in 1842, Lord Campbell proposed<sup>e</sup> that the House of Lords should sit and hear appeals and writs of error during the prorogation of parliament, but not during its dissolution; with a power to the Queen, by proclamation, to discontinue such sittings of the House of Lords; and besides summoning the equity and common law judges, the judge of the Prerogative Court and the judge of the High Court of Admiralty might also be summoned.

It will be seen, therefore, that there is a considerable weight of authority for pro-

<sup>c</sup> See bill, printed 12 L. O., 2.

<sup>d</sup> See 19 L. O., 424.

<sup>e</sup> See 23 L. O., 370.

<sup>b</sup> 28 L. O., 405.

longing the sittings of the House of Lords beyond the political session, and for calling in further legal assistance, in some cases with voices, in others not. And it must be admitted, that if these propositions were carried—and we have already said we consider it highly reasonable and desirable that they should pass into law—it would be a virtual surrender of the judicial power of the House of Lords to the law lords, and to those learned persons appointed to assist them. But we repeat, that however desirable it may be to make this alteration, it should be made *by bill*, and after full deliberation and consideration, and not in the off-hand manner in which it was made in the case of Mr. O'Connell.

### EXEMPTION OF GOVERNORS FROM ARREST.

By stat. 11 & 12 Will. 3, c. 12, an act made to punish governors of plantations for crimes committed by them in such plantations, it is recited that a due punishment is not provided for such offences, and that governors, &c. have taken advantage thereof, "not deeming themselves punishable for the same here, nor accountable for their crimes and offences to any person within their respective governments and commands," but it will be seen that this does not apply to civil officers. In *Fabrigas v. Mostyn*, 1 Cowp. 161, Lord C. S. Mansfield said, "No criminal prosecution lies against a governor, and no civil action lies against him, because what would the consequences be? Why, if a civil action lies against him, and a judgment obtained for damages, he might be taken up and put in prison on a *capias*, and therefore, locally, during the time of his government, the court in the island cannot hold plea against him." See also *Tandy v. Earl of Westmoreland*, 27 St. Tr. 1246; 20 St. Tr. 229. In a recent case, a plea to an action of debt, brought in the court of First Instance, in the Island of Trinidad, that the defendant was, at the commencement of the action, and still continues to be Lieutenant-Governor of the island, and as such, liable to be sued, overruled by the said court, but "semble," says the reporter, "that though judgment be given against such governor his person is not liable to be taken in execution while on service. There was an appeal to the Privy Council. Lord Brougham, in giving judgment, entered fully into the subject, from which we may give the following extract:—

"It may safely be affirmed," said his lordship, "that they who maintain the exemption of any person from the law, by which all the king's subjects are bound, or what is the same thing, from the jurisdiction of the courts, which administer that law to all besides, are

bound to show some reason or authority leaving no doubt upon the point. The reference to analogies, or the supposition of inconvenient consequences, must be much more pregnant than any that can be urged in this case, to support, or even to countenance such a claim. If it be said that the governor of a colony is *quasi* sovereign, the answer is, that he does not even represent the sovereign generally, having only the functions delegated to him by the terms of his commission, and being only the officer to execute the specific powers with which that commission clothes him. 'The governor,' (said Lord Chief Justice *De Grey*, in *Fabregas v. Mostyn*, 1 Cowp. 161, when that case was before the C. P., which afterwards came, by error, into B. R.,) 'is the king's servant; his commission is from him, and he is to execute the powers he is invested with under that commission, which is, to execute the laws of *Minorca* under such instructions as the king shall make in council.' It is proper to observe, that this was the case of a governor of a province, formerly and once belonging to the Crown of Spain, as *Trinidad* formerly did; and that one of the arguments for the defendant, upon his claim upon the highest ground, namely, that he was, by the Spanish law and constitution, absolute within a district at least of his government, having 'supreme power vested in him, and being only accountable to God.' Again, this court, in *Cameron v. Kyte*, (3 Knapp's P. C. cases, 332,) when a claim to represent the sovereign and hold the royal power by delegation was set up, refused to allow it, and considered him as only an officer with a limited authority. Their lordships, in deciding that case, referred to the *dictum* of *Sir William Scott* in the *Rolla*, (6 Robinson, Adm. Rep., 364,) that a naval commander may be reasonably supposed to carry with him such a portion of the sovereign authority as shall be necessary to provide for the exigencies of the service. But they said that this observation is plainly applicable only to the case of a commander carrying on war in a remote quarter, and the authority necessarily incident to that situation, and can have no application to the case of a colonial governor. Nor must we forget, in reference to the position of the supreme power in the state, that by our law and constitution it is not in the sovereign, but in the parliament, the sovereign himself being liable to be sued; though in a particular manner; and if his liability be such, even as much restricted as some have occasionally maintained, it would still be greater than the appellant's argument supposes the liability of a governor to be. The consequences imagined to follow from holding the governors liable to action like their fellow subjects are incorrectly stated, and, if true, would not decide the question. For it by no means follows, that because an action may be maintained and judgment recovered, therefore the same process must issue against the governor as against another person pending his government. His being liable to be taken in execution is not the necessary consequence

of his being liable to have a judgment against him. There were anciently more instances than happily now, of persons privileged from legal process; but there are still some such examples, as privilege of peerage and of parliament, and of persons in attendance upon the sovereign, and upon courts of justice. None of these privileges protect from suits, all more or less protect from personal arrest in execution, or judgment recovered by suit. Indeed the old, and we may now say, obsolete writ of protection which the King granted to his servants and debtors, purported to be a protection from all pleas and suits; yet the courts held that no one should thereby be delayed in his action, but only that execution should be stayed after judgment. Cro. Jac. 419, 25 Edw. III. st. 5, c. 119. It may be observed in passing, that those protections were a provision made by the old law for the security of persons in the foreign service of the crown; as commanders of armies, ambassadors, and, doubtless, governors of the continental dominions also. Co. Litt. 130 a. It therefore is not at all necessary that in holding a governor liable to be sued, we should hold his person liable to arrest while on service,—that is, while resident in his government. It is not even necessary that we should meet the suggestion of his goods in all circumstances being liable to be taken in execution,—though that is subject to a different consideration. Next, suppose all these alleged consequences had been accurately stated, they could not necessarily decide the question: many cases might be put, of as great inconvenience, and even of as great violence done to public feeling, and as great mischief to the public service, by the execution of legal process, as any in the cases that have been put. Yet in none of these circumstances can it for a moment be pretended that the law is not to take its course. The inconvenience which would result from a general officer or an ambassador being taken in execution, on the eve of his departure on service abroad, or the mischief that would ensue to the administration of justice from a judge being taken in execution almost at any time, are quite undeniable; but equally certain it is, that these inconveniences offered no argument whatever against the unquestionable liability of all those functionaries to undergo, like the rest of the king's subjects, the process of the law. Indeed, it is manifest, that if these alleged consequences prove anything, they prove too much; they go to set up an exemption from suit in the courts of this country during the continuance of the governor's functions. For nothing that happens to him within the limits of his own government could be much more injurious to his authority than his being outlawed in the courts of Westminster, or having judgments against him there; supposing he prevented the outlawry by appearing to the actions. Then is there any authority of decided cases for the position in question? It is unnecessary to say anything of *Tundy v. Lord Westmoreland*, (27,

State Trials, 1246; 29 State Trials, 229,) because the question there arose upon an act of the Lord Lieutenant in his capacity of governor, and because there would be no safety in relying upon the report of the case; it ascribes *dicta* to the court, which there is every reason to suppose must be inaccurately reported *dicta*, in some of which it is impossible to concur. The case of *Fabrigas v. Mostyn*, when it came by error into the King's Bench, furnishes the only thing like authority for the contention of those who seek to impeach the judgment under review, and it is not pretended that the decision is upon the point now in question. An action of trespass and false imprisonment having been brought against the governor of *Minorca*, he pleaded, 1st., the general issue, and then a justification: that he had, as governor, and in the discharge of his duty, imprisoned and removed plaintiff, to prevent and put down a riot and mutiny in which he was engaged. To this special plea there was a replication *de injuria*, and both issues were found for plaintiff, whereupon the defendant having tendered a bill of exceptions, on the ground that the learned judge who tried the cause ought to have directed the jury to find for the defendant, because he had acted as governor of *Minorca*, and was not liable to be sued in the courts of England, for acts done in *Minorca*, a writ of error was brought in B. R., and the court gave judgment for the defendant in error, (plaintiff below,) holding it quite clear that an action will lie, and that the learned judge did right in not directing the jury as required by the defendant. There having been no evidence to support the plea of justification, there could be no objection taken to the finding of the jury, and a motion for a new trial in the Common Pleas had been refused, whether made against the verdict or against the judge's direction does not distinctly appear. Nor, indeed, is it quite clear from the report, in which way the governor's counsel really meant to shape their case; and this, though three elaborate arguments had been held, is observed upon by the court in passing the judgment. This much, however, is quite certain,—that the decision is not against the liability of Governor Mostyn, to be sued in the island during his government, even for acts of state done by him, much less for a private debt contracted in his individual capacity, before the government commenced. It is only a decision that he was liable to be sued in England for personal wrongs done by him while governor of *Minorca*. Nor does the decision thus given rest upon any doctrine denying his liability to be sued in the island. There is no doubt a *dictum* of Lord Mansfield in giving the judgment,—that "the governor is in the nature of a viceroy, and that therefore, locally during his government, no civil or criminal action will lie against him." And the reason, and the only reason, given for this position is, because upon process he would be subject to imprisonment; with the most profound respect for the authority of that illustrious judge, it must be observed, that, as has

been shown, the governor being liable to process during his government, would not of any necessity follow from his being liable to action, and that the same argument might be used to show that an action lies not against persons enjoying undoubted freedom from arrest by reason of privilege. But the decision in the case does not rest on this dictum: on the contrary, Lord Mansfield goes on to say that another reason of a different kind "would alone be decisive;" and, indeed, the dictum itself is introduced as if the question had arisen upon a plea in abatement to the jurisdiction; whereas it arose not on the pleadings at all, as his lordship more than once remarked. Nothing can be more clear than the action being of a transitory nature: its being maintainable in *Minors* would not have prevented it from lying in England also. It is a possibility that the expressions used may have been somewhat altered in the report. It certainly represents Lord Mansfield (*Cowp.* 174) to have treated the manner in which the Privy Council deals with colonial law, as a similar case to that of courts having to examine questions of foreign law, which is proved as matter of fact. But supposing the report is quite accurate in all respects, the decision in no way supports the contention of the appellant. A case was decided in parliament, at the end of Charles the Second's reign—*Dutton v. Howell*—which Governor Mostyn's counsel relied much upon, and in which the judgment of all the judges (for it had been brought from the Exchequer Chamber and King's Bench) was reversed, and a governor held not liable to be sued in England for imprisoning a person guilty of official delinquency under his government. It is quite clear that this case afforded no precedent for Governor Mostyn's, much less for the defence to the present action. It went on the ground of the governor and his council having acted judicially; and though the council for the plaintiff in error before the House of Lords urged, among other things, that the governors of Scotland and Ireland could not be sued, so did they also contend, that it would be equally dangerous to sue privy councillors (*Show, P. C.* 27); a position probably as much disregarded by the House of Lords, who reversed the judgment, as it certainly had been, with the other arguments of the same cast, by the judges of the three courts who had pronounced it. It is unnecessary to say anything respecting the statutory provision of 11th and 12th Will. 3, c. 12, which in one view makes rather more against the appellant than it does for him, nor respecting the alleged judicial powers of the Governor of Trinidad, as he appears not to stand in the situation which has been supposed. It cannot be alleged that the process runs in his name; and even if he were (which he is not) the Court of Error, that would not decide that he cannot be sued. The judges of courts in this country, which have the most unquestionable jurisdiction in certain actions, are themselves liable to be sued in such courts: and cases might easily be figured, in which

great difficulty would arise how to try suits brought against them in consequence of their official position; but the possibility of such difficulties, whatever legislative enactments it might give rise to upon its nearer approach, can never surely be urged as a reason for denying what all men know to be the law, namely, that those parties are liable to be sued. The judgment appealed from must, therefore, be affirmed, and their lordships see no reason for varying from the general rule. It must, therefore, be affirmed with costs. *Hill v. Bigge*, 3 Moore, 465.

## ALTERATIONS IN CONVEYANCING PRACTICE SINCE THE 1ST OF JANUARY.

It may be useful to state, that so far as we have observed ourselves, or have been informed, no material alteration has been made in the practice of conveyancing since the new act, 7 & 8 Vict. c. 76, came into operation. We have heard indeed of certain instruments on parchment being in existence, commencing "*This deed*," but we apprehend the great majority, and certainly all that we have seen, begin, as heretofore, with those apparently immortal words "*This indenture*." The reference to the act dispensing with the lease for a year, 4 & 5 Vict. c. 21, has, we believe, in no case been omitted in a deed intended to operate as a lease and release. But in settlements of real estate the usual limitation "to trustees to preserve contingent remainders," has in many cases been struck out.

## THE INNS OF COURT.

We are glad to find that the benchers have not shrunk from the painful duty imposed on them, of considering the charges affecting some unworthy members of the bar, and have not been unwilling, if necessary, to vindicate the honour and respectability of the profession, where such charges could be satisfactorily established. But it also gives us much pleasure to hear that the state of the inns of court, with reference to the assistance given by those institutions to legal learning and legal education, is also under the consideration of these learned persons; and we do not despair of seeing the establishment of public lectures and an examination before a degree is conferred.

We may add, that with reference to the case to which we alluded in our last number, as not having been established, we have reason to believe that the final and formal decision of the benchers has not yet been given, and we deem it improper to enter into details until such decision shall have been pronounced.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

BY MR. CAYLEY SHADWELL.

### TRANSFER OF PROPERTY ACT.

7 & 8 Vict. c. 76.

MR. SHADWELL delivered his fifth lecture on this act on the 16th December. After adverting again to the doubts which had arisen on the construction of the enactment relating to the lord's fine on the sale of a contingent remainder in copyholds, of which he had treated in the preceding lecture, he proceeded to consider the state of the law relating to *Expectancies*, which the new act did not alter.

He then entered on the 6th section, which he stated to be: "That neither the word 'grant' nor the word 'exchange' in any deed shall have the effect of creating any warranty or right of re-entry, nor shall either of such words have the effect of creating any covenant by implication, except in cases where by any act of parliament it is or shall be declared that the word 'grant' shall have such effect."

He had explained in a former lecture, when commenting on the 3rd section, that when at the present day an exchange of lands was to be effected, it was not the practice to resort to the old common law method of exchange, which was a distinct species of conveyance; and he then stated the several inconveniences attending that old common law method of exchange which had gradually led to its falling into disuse; and that the present method of effecting an exchange was by two conveyances, governed by the same rules as other conveyances, and not differing from them except in this—that in each conveyance the consideration to the conveying party was the acceptance of land, and not the acceptance of money. This being so, so much of this 6th section as relates to the word "exchange" must be considered as applying to obsolete law, and not producing any practical effect.

In looking over conveyances, it would be observed that trustees and mortgagees, when parties to them, were seldom made to convey by the word "grant." If it were an estate in fee simple, they were usually made to convey by such words as "bargain, sell, alien, and release," while the party beneficially interested, the vendor or the mortgagor, used such words as "grant, bargain, sell, alien, release, and

confirm," never omitting the word "grant." This distinction between the words used by a trustee and those used by a cestui que trust, was grounded on the peculiar efficacy which the law attributed to the word "grant," which it was said implied that the party granting undertook to warrant or covenant that the grantee should enjoy the property according to the terms of the conveyance. *Browning v. Wright*, 2 Bos. & Pull. 21.

Considering what it was that this covenant amounted to, namely, that the party making it would, if the grantee was turned out of possession by a hostile claimant, make good the loss out of his own pocket, it would be seen that it was clearly an engagement that a trustee ought not to be required to enter into. Accordingly, it was a rule of conveyancing, that a trustee never entered into covenants for title, nor indeed into any covenant at all, except a covenant that he himself had not done anything to injure or encumber the estate. As a trustee did not enter into express covenants for title, so neither did he convey by the word "grant," which was said to imply covenants for title. This was the general rule. *Platt on Covenants*, p. 48 & 49. But there was an exception to it in the case of a conveyance by trustees of advowsons, or tithes, or rentcharges, or reversions, or other incorporeal hereditaments, which were said to lie in grant and not in demesne. To a conveyance of incorporeal hereditaments thus lying in grant, it was said that the word "grant" was indispensable; and between these two conflicting requisitions, of a trustee not conveying by the word "grant," and of incorporeal hereditaments not being properly conveyed without the word "grant," some practitioners attempted to steer a middle course, by making the trustee convey thus: "The said A. B. doth hereby *grant*, by way of conveyance only, but not by way of covenant." This expedient however did not find favour in the eyes of Lord Eldon. Whenever the form came under his lordship's notice, he was sure to make some sarcastic remark upon it, asking—"How can you *grant* without covenanting, when grant implies covenant?"

It may probably be presumed to have been his lordship's opinion, as it was that of the majority of professional men, that the word *grant* was not necessary to the conveyance of incorporeal hereditaments, but that any other conveying words would do equally well. *Sanders on Uses & Trusts*, vol. 2, p. 4, title "grant." It was, however, to settle this doubt, as well, perhaps, as to provide for the case, which must sometimes happen, of a trustee being allowed by an unskilful practitioner to convey by the word *grant*, that this word *grant* was deprived of its sting, by enacting that the word *grant* "shall not have the effect of creating any covenant by implication."

The only objection the lecturer had heard to this, if indeed it was one, was, that it was running counter to the stream of legislation in other cases, for that in many of the late acts, the church-building acts, for example, it was

expressly enacted, for the purpose of shortening the deeds, that the word "grant" should imply the usual covenants for title; and it was to meet these cases that the exception was made at the end of the section: "Except in cases where by any act of parliament it is or shall be declared that the word 'grant' shall have such effect."

The 7th section was as follows: "That no conveyance shall be voidable only when made by feoffment or other assurance, where the same would be absolutely void if made by release or grant; and that no assurance shall create any estate by wrong, or have any other effect than the same would have if it were to take effect as a release, surrender, grant, lease, bargain and sale, or covenant to stand seised, (as the case may be)."

Mr. Sanders, in his *Uses and Trusts*, vol. 2, p. 21, title, Feoffment, says, "that however slender, bare, or tortuous the possession of the feoffor is, his feoffment necessarily and unavoidably vests the freehold in the feoffee till the disseisee, by entry or action, restores his possession, and that a fine may be levied, or common recovery suffered, upon this estate of freehold by disseisin, which feoffment, fine, and recovery bar the owner of the freehold and inheritance."

This was the description of a conveyance operating by wrong, and it was to do away with this peculiar effect of a feoffment that this 7th section was introduced into the act.

The mention of feoffment reminded the lecturer, that in commenting on the 2nd section he omitted to consider what effect the present act had upon conveyances by corporations, who usually conveyed freehold estates by feoffment.

Corporations convey by feoffment, and not like individuals, by lease and release; because the lease for a year, which was usually a bargain and sale, implied that the bargainor was seised to the use of the bargainee for the year, and this machinery could not be applied to a corporation, because it was said that a corporation cannot be seised to the use of another.

For this reason, it had hitherto been the settled practice to make corporations convey by feoffment; and the question was, whether this act, which professed to relieve parties from the necessity of using the lease for a year, thereby gave to corporations the power of conveying by release alone, without feoffment, and without livery of seisin.

The doubt rested on the peculiar wording of the 2nd section: "That every person may convey by any deed, without livery of seisin, such estate as before the act he might have conveyed by lease and release." But by lease and release, as commonly understood, a corporation could not convey;—was a corporation, therefore, within this section of the act?

The lecturer's attention was drawn to this point by finding it among the remarks which had been entrusted to him, that were made by the counsel to whom copies of the bill were forwarded, on its being first introduced into the House of Lords. One of these gentlemen

pointed out the difficulty he had been mentioning, and suggested, that instead of the words "such estate as before the act he might have conveyed by lease and release," they should have been, "such estate as before the act he might have conveyed by feoffment."

The suggestion however was not attended to. When it was known that the person by whom it was made, was the late Mr. Duval; it would be seen that the doubt left upon the clause by the neglect of that suggestion was anything but a trifling one. The practical conclusion was, that till the decision of a court upon the point, those advising on conveyances by corporations, including of course grants by them of freehold leases for lives, must insist upon the ancient custom being followed, of taking the grant or other conveyance by feoffment with livery of seisin.

The next section, the 8th, which effected a change of the name and qualities of contingent remainders, had probably attracted as much attention, and excited as much discussion, as any part of the act. How it would work, it was of course the height of presumption to predict, until it had undergone a good deal of that judicial discussion to which it was inevitably destined. The lecturer, however, confessed himself prejudiced in its favour, and the clear simplicity with which it effected, or purported to effect, its object, appeared to him to deserve the character that had been sometimes given as descriptive of fine writing: "That it is natural without being obvious."

The section was rather a long one, and, for the benefit of those not much acquainted with the subject, he would state what the principal grievance was that this section proposed to remedy. To do so, he must carry his hearers back for a moment to the feudal times. The extreme respect which the law paid to the estate of freehold, arose from this, that the freeholder was the man who was to do the lord, of whom he held, suit and service,—to follow him to the field, to furnish him with soldiers, and to aid him with money when he was taken prisoner, when his son was knighted, or when his daughter married,—in short, on all his occasions. The estate, which was to bind the holder of it to all this, was clearly too important ever to be allowed to remain vacant; it therefore became a maxim, that if on the determination of the estate of the freeholder there was not any one ready at the very instant, according to the terms of the grant, to step into his place, the feud reverted to the lord. From this origin was derived the modern maxim, that if at the determination of the particular estate the next remainder expectant upon it was not ready to vest in possession, it was gone for ever. This was often productive of great hardships, and was the evil proposed to be remedied by this section. Suppose a limitation to a man for life, remainder to first and other sons in tail: as long as the man had no son, the limitations to his unborn sons were contingent, and by feoffment he might destroy them; but what could be harder than that in



such a case the father should have this power? There were anomalies enough to be sure in this part of the law; for though the contingent remainders might be thus destroyed, if they were legal remainders, if they were *equitable* remainders, they could not. Conveyancing also stepped in, in all well drawn instruments, to prevent this hardship, by interposing between the estate for life to the father and the contingent remainders in tail to the unborn children, a limitation to trustees and their heirs, during the life of the father, upon express trust to preserve these contingent remainders: a limitation, the apparent uselessness of which, in the commencement of their studies, had no doubt often struck them as sufficiently absurd.

One of the consequences of this legal protection to contingent interests would be, the doing away with the necessity, in future settlements, of this limitation to trustees to preserve contingent remainders. He had heard the contrary frequently asserted in conversation, and had also seen it stated in print; it being said that these trustees were now as requisite to preserve the estate of the tenant for life from forfeiture, as they formerly were to preserve the contingent remainders. But this he apprehended to be a mistake: the ordinary causes of forfeiture are now all gone. Felony now no longer worked a forfeiture; waste no longer worked a forfeiture; for the new statute of limitations had abolished the action of waste to which forfeiture was attached as an incident by statute, the statute of Gloucester, 6 Edw. 1, c. 5; and alienation by conveyance operating by wrong was no longer a cause of forfeiture, for that kind of conveyance was abolished by this present act; and if there did remain some out of the way causes of forfeiture for a tenant for life, (one had been mentioned—a tenant for life making avowry as tenant in fee in an action of replevin,) it seemed a sufficient answer to say that a tenancy for life, followed by contingent remainders, did not seem to require more protection than a tenancy for life followed by vested remainders; and yet it had never been the practice, in limiting estates for life with remainders following them which were vested in their commencement, to introduce a limitation to trustees to preserve. It would seem therefore as if for the future it would be a sufficient protection to the tenant for life in all cases to make dispunishable of waste.

The 9th section, which enabled the personal representatives of a mortgagor, on the mortgage being paid off, to re-convey to the mortgagee the legal estate which might have descended to the heir or devisee, promised to be a very useful one. It was based upon the maxim of equity, that the money secured on the mortgage was the principal, the estate mortgaged only the accessory.

The 10th section also, which enacted that the receipts of trustees should be effectual discharges, was a great improvement; but as the questions that arose upon these two were much connected with mortgages, he should reserve them for future consideration.

The 11th and 12th sections had not much bearing upon practice; he therefore passed them over.

Of the 13th section, which was to suspend the operation of the statute, the true interpretation appeared to be, that after the 1st of January it did not prevent the conveyance by a deed operating under the act of estates and interests created before, but it was so confusedly drawn as almost inevitably to lead to litigation.

## NEW RULES AND ORDERS IN BANKRUPTCY.

WE last week printed the new rules and orders made under the 7 & 8 Vict. c. 96, s. 38, for the better carrying into execution the statute 5 & 6 Vict. c. 116, as amended by the 7 & 8 Vict. c. 96. The orders are dated the 21st December, 1844, and the following is the Table of

### FEEs

to be received and taken by, or accounted for and paid over to the Chief Registrar of the Court of Bankruptcy, and to be paid by him as directed by the 7 & 8 Vict. c. 96, s. 50:—

	<i>s. d.</i>
On filing petition . . . . .	1 0
On swearing every affidavit . . . . .	1 6
On filing affidavits and other documents . . . . .	1 0
For every search . . . . .	1 0
For an office copy of the schedule and accounts annexed for the official assignee, unless the petitioner has delivered one at the time of filing his petition, per folio of 90 words . . . . .	0 1½
For every sitting in the matter of any petition, by way of charge for the use of the court . . . . .	5 0

## HILARY TERM EXAMINATION.

THE examiners appointed for the examination of persons applying to be admitted attorneys, have appointed the candidates to attend on *Thursday* the 23rd instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane. The examination will commence at ten o'clock precisely.

The articles of clerkship, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before *Friday* the 17th instant.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

PARLIAMENTARY RETURNS.

JUDICIAL OFFICERS, AND OFFICERS OF COURTS OF LAW AND EQUITY.

(Concluded from page 191, ante.)

NAME.	OFFICE, PENSION, &c.	AMOUNT		
		per Annum.		
	SALARIES.	£	s.	d.
Robinson, <sup>a</sup> Charles Francis	Clerk in Court of Queen's Bench	..	..	..
Richards, <sup>b</sup> S.	One of the Masters of the Court of Exchequer	..	..	..
Richards, Right Hon. John	Third Baron of the Court of Exchequer, Ireland	..	..	..
Radcliffe, <sup>c</sup> Right Hon. John	Judge of the Prerogative Court	..	..	..
Rae, Sir William	Her Majesty's Advocate, Scotland, Salary Allowance in lieu of Fees for criminal business	1,387	10	0
		1,000	0	0
				2,387 10 0
Shadwell, Right Hon. Sir	Vice-Chancellor	..	..	..
Lancelot	Chief Clerk to the Masters of the Common Pleas. Salary and Fees received as Registrar	..	..	..
Sherwood, <sup>d</sup> Thomas	Chief Secretary to the Master of the Rolls	..	..	..
	Provisional Assignee of the Insolvent Debtors' Court	100	0	0
	Fees	1,172	7	9
				1,272 7 9
Sugden, Right Hon. Sir	Lord High Chancellor of Ireland	..	..	..
E. B.	Registrar of the Prerogative Court, Ireland	..	..	..
Stewart, <sup>e</sup> William	One of the Masters of the Court of Chancery	..	..	..
Senior, <sup>f</sup> Nassau William	Commissioner of Bankruptcy	..	..	..
Skinrow, Walker	Ditto	..	..	..
Stephen, Henry John	Ditto	..	..	..
Stephenson, Richard	Ditto	..	..	..
Tindal, Right Hon. Sir N.C.	Chief Justice of the Court of Common Pleas	..	..	..
Turner, <sup>g</sup> R.	One of the Masters, Civil side, Court of Queen's Bench	..	..	..
Torrens, Robert	Second Justice Court of Common Pleas, Ireland	..	..	..
Townsend, John	Master in Chancery, ditto	..	..	..
Vincent, H. W.	Queen's Remembrancer, Court of Exchequer	..	..	..
Wigram, <sup>h</sup> Right Hon. Sir	Vice-Chancellor	..	..	..
James	Commissioner of Bankruptcy	..	..	..
Williams, Sir C. F.	One of the Puisne Judges of the Court of Queen's Bench	..	..	..
Williams, Sir John	Ditto	..	..	..
Wightman, Sir William	One of the Masters of the Court of Chancery	2,500	0	0 <sup>i</sup>
Wingfield, W.	Compensation under 3 & 4 Will. 4, c. 94 <sup>j</sup>	725	0	0 <sup>k</sup>
				3,225 0 0
Wilson, Sir Giffin	One of the Masters of the Court of Chancery	2,500	0	0 <sup>l</sup>
	Compensation under 3 & 4 Will. 4, c. 94 <sup>j</sup>	725	0	0 <sup>m</sup>
				3,225 0 0
Walker, <sup>n</sup> Robert Onebye	One of the Registrars of the Court of Chancery, salary	1,800	0	0
	Compensation	350	0	0
				2,150 0 0

<sup>a</sup> Paid out of fees. <sup>b</sup> Ditto. <sup>c</sup> Since deceased. <sup>d</sup> Paid from fees.  
<sup>e</sup> From fees receivable under Lord Hardwick's order, and the order of 21st December 1833.  
<sup>f</sup> Derived from fees paid by the public. <sup>g</sup> From the Suitors' Fund. <sup>h</sup> Paid from fees.  
<sup>i</sup> From the Suitors' Fund. <sup>j</sup> Ditto. <sup>k</sup> From the Suitors' Fee Fund.  
<sup>l</sup> From the Suitors' Fund. <sup>m</sup> From the Suitors' Fee Fund. <sup>n</sup> Ditto.

NAME.	OFFICE, PENSION, &c.	AMOUNT per Annum.
	<b>SALARIES.</b>	<b>£. s. d.</b>
Wood, Hugh . . .	One of the Registrars of the Court of Chancery, salary . . .	1,500 0 0 <sup>a</sup>
	Compensation . . .	350 0 0 <sup>b</sup>
		1,850 0 0
Walker, <sup>c</sup> Edmund . . .	One of the Masters of the Court of Exchequer . . .	2,054 19 7
Walton, <sup>d</sup> W. H. . . .	Ditto . . .	1,300 0 0
Wright, Thomas Guthrie . . .	Auditor of the Court of Session, Scotland, salary . . .	700 0 0
	Compensation . . .	319 12 0
		1,019 12 0
West, Martin John . . .	Commissioner of Bankruptcy . . .	1,800 0 0
Winslow, <sup>e</sup> Edward . . .	Secretary of Bankruptcy, salary . . .	1,200 0 0
	Fees (annual average receipt) . . .	300 0 0
		1,500 0 0
<b>PENSION:—JUDICIAL SERVICES.</b>		
Alexander, <sup>f</sup> Sir William . . .	Late Chief Baron of the Exchequer . . .	2,812 10 0
Avonmore, Viscount . . .	Late Principal Registrar, Court of Chancery, Ireland . . .	4,199 19 0
Adlington, Thomas . . .	Late Side Clerk, of the Court of Exchequer . . .	1,160 7 8
Breugham and Vaux, Lord . . .	Late Lord Chancellor of England . . .	5,000 0 0
Bushe, Right Hon. C. K. . . .	Late Chief Justice, Court of Queen's Bench, Ireland . . .	3,507 13 10
Cottenham, Lord . . .	Late Lord Chancellor of England . . .	5,000 0 0
Cress, <sup>g</sup> Francis . . .	Retired Master of the Court of Chancery . . .	1,500 0 0
Chilton, G. . . .	Late one of the Masters of the Court of Exchequer . . .	1,400 0 0
Campbell, Sir Archibald . . .	Late a Lord of Session, and Justiciary, Scotland . . .	1,950 0 0
Craustown, George . . .	Ditto . . .	1,500 0 0
Dunfermline, Lord . . .	Late Lord Chief Baron of Exchequer, Scotland . . .	2,000 0 0
Dwyer, Francis . . .	Late Six Clerk, Chancery, ditto . . .	1,088 10 8
Ellenborough, Lord . . .	Late Chief Clerk Court of Queen's Bench . . .	7,700 0 0
Edgell, Henry . . .	Late Clerk of the Errors, Court of Exchequer . . .	2,338 17 8
Hudson, Thomas . . .	Late one of the Prothonotaries of Court of Common Pleas . . .	4,034 1 0
Hope, Right Hon. Charles . . .	Late Lord President of the Court of Session, Scotland . . .	3,600 0 0
Johnson, William . . .	Late Justice, Court of Common Pleas, Ireland . . .	2,400 0 0
Jardine, Sir Henry . . .	Late King's Remembrancer, Scotland . . .	1,400 0 0
Kenyon, Hon. Thomas . . .	Late Filacer, Court of Queen's Bench . . .	5,496 5 4
Kenyon and Ellenborough, <sup>h</sup> Lords . . .	Late Custos Brevium ditto . . .	2,089 17 4
Littledale, Sir Joseph . . .	Late one of the Judges of the Queen's Bench . . .	2,625 0 0
Moore, Arthur . . .	Late Justice Court of Common Pleas, Ireland . . .	2,400 0 0
Monseypenny, David . . .	Late a Lord of Session and Justiciary, and one of the Lords Commissioners of the Jury Court, Scotland . . .	2,400 0 0
Miller, Sir William . . .	Late a Lord of Session, ditto . . .	2,250 0 0
Platt, Samuel and Joshua . . .	Late Joint Clerk of the Papers, Court of Queen's Bench . . .	1,551 7 4
Plunkett, Lord . . .	Late Lord Chancellor of Ireland . . .	3,692 6 1
Wynford, Lord . . .	Late Chief Justice, Court of Common Pleas . . .	3,750 0 0
Watlington, George . . .	Late one of the Prothonotaries of the Court of Common Pleas . . .	2,005 11 4
White, Thomas . . .	Late Side Clerk of the Court of Exchequer . . .	1,114 1 0
Wellesley, <sup>i</sup> the Marquis of . . .	Late Chief Remembrancer of the Court of Exchequer, Ireland . . .	5,193 7 6

<sup>a</sup> From the Suitors' Fee Fund.<sup>b</sup> Ditto.<sup>c</sup> From the Fee Fund.<sup>d</sup> Ditto.<sup>e</sup> Note.—Mr. Winslow did not hold the office for a whole year, though the whole year's receipt is here stated.<sup>f</sup> For part of the year, (since deceased.)<sup>g</sup> From the Suitors' Fund, (since deceased.)<sup>h</sup> Since deceased.

## CLERKS OF MASTERS IN CHANCERY.

THE death of the Chief Clerk of Master Richards having occasioned a vacancy in that office, the Master has exercised his right of ap-

pointment in favour of Mr. John Philpot, sen., of Southampton Street. This appointment of a solicitor much esteemed by his brethren and of long experience, will, no doubt, give general satisfaction to the practitioners.

# PROCEEDINGS UNDER THE GENERAL RAILWAY ACT.

UNDER the Railway Department of the Board of Trade, the following notice was given in the London Gazette, dated 31st December, 1844:—

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of the Privy Council for Trade of the 24th August, 1844, for the transaction of railway business, having had under consideration the following schemes for extending railway communication in the district comprising the counties of

*Cornwall and Devon, viz:—*

The Cornwall and Devon Central Railway,  
The Cornwall Railway (Plymouth to Falmouth),

The Great Western and Cornwall Junction Railway,

The West Cornwall Railway,  
The St. Ives Junction Railway,

The North Devon (Credon and Barnstaple) Railway,

The Exeter and Credon Railway,

The Torquay and Newton Abbott Railway,  
have decided on reporting to parliament in favour of

The Cornwall Railway (Plymouth to Falmouth),

The West Cornwall Railway (up to the junction with the Cornwall Railway),

The St. Ives Junction Railway;

*against*

The Cornwall and Devon Central Railway,

The Great Western and Cornwall Junction Railway;

and recommending the *postponement* until a future period of

The North Devon (Credon and Barnstaple) Railway),

The Exeter and Credon Railway,

The Torquay and Newton Abbott Railway.

And the Board having further had under consideration the following schemes for extending railway communication in the districts of

*Berkshire, Hampshire, Wiltshire, Dorsetshire, Somersetshire, and Devon,*

Lying intermediate between the Great Western, Bristol and Exeter, and South Western Railways, viz:—

The Reading, Basingstoke, and Hungerford Railway (Great Western),

The Wilts and Somerset Railway,

The Bristol and Exeter—Durstun and Yeovil Branch,

The Southampton and Dorchester Railway,

The Basingstoke and Didcot Junction Railway (London and South Western),

The London and South Western (Salisbury to Yeovil),

The London and South Western—Hook Pit Deviation,

The Salisbury, Dorchester, and Weymouth Railway,

have decided on reporting to parliament in favour of

The Reading, Basingstoke, and Hungerford Railway (Great Western),

The Wilts and Somerset Railway—subject to the condition of applying to parliament in a future session for an improved line of communication towards Bath and Bristol.

The Bristol and Exeter—Durstun and Yeovil Branch,

The Southampton and Dorchester Railway; and *against*

The Basingstoke and Didcot Junction Railway (London and South Western),

The London and South Western—Salisbury to Yeovil,

The London and South Western—Hook Pit Deviation,

The Salisbury, Dorchester, and Weymouth Railway.

(Signed)

DALHOUSIE,

S. LAING,

G. R. PORTER,

D. O'BRIEN,

J. CODRINGTON.

## THE LATE SOLICITOR OF THE EXCISE.

AN esteemed correspondent has sent us the following extract from "*The Globe*."—

"Mr. Mayow entered the excise about the year 1804, and performed the duties of assistant solicitor up to 1829, when Mr. Carr, the chief solicitor, died, and Mr. Mayow was appointed his successor. Up to this period the office had been held by letters patent from the crown, and the chief solicitor was paid by fees; but an alteration took place on Mr. Mayow's succession to the appointment, and he resigned his patent and right to take fees; in consideration of which the Lords of the Treasury allowed him a yearly income of 2,000*l.*, with a distinct intimation to the Board of Excise that the salary would be reduced one-half on the discontinuance of Mr. Mayow's service by death or otherwise.

"The deceased gentleman married a lady with a princely fortune, and had three sons and two daughters. One of the former studied for a short time for the bar, but afterwards relinquished that profession. Two of them hold livings in the Church of England, and the third is an officer in the dragoons. The deceased possessed large estates in Norfolk and Cumberland, and the daughter of the Bishop of Cork is united to one of the sons belonging to the church. Mrs. Mayow died about five months since.

"On several occasions Mr. Mayow has been known, when a needy offender against the excise laws had been sent to gaol in default of paying a fine imposed, to become a private donor to the family proportionably to their distress."

We have always entertained the opinion that these government solicitorships should be

held by attorneys and not by barristers, and trust that the vacancy will be filled up with due regard to the claims of the attorneys and solicitors.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, ESQ., Barrister at Law.]

JUDGMENT CREDITOR.—EXECUTORS.—DECREE IN EQUITY.—INJUNCTION.

*A judgment creditor proceeded to obtain execution against the debtor's executors, before they were able to realise assets. Before the plaintiff was in a position to issue the execution—being delayed by a false plea pleaded by the executors—a decree was obtained against them to account in a creditors' suit, and notice given to the plaintiff at law:—Held, that an injunction to restrain him from proceeding to execution was properly issued.*

THIS was a motion to discharge an order of the Vice-Chancellor of England for an injunction to restrain a judgment creditor from proceeding to execution against the debtor's executors, on the ground (among others) that a decree to account had been obtained against them in a creditors' suit, before the judgment creditor was in a position to take out execution, and that he had notice of the decree in equity.

Mr. Bethell and Mr. Deam, for the judgment creditor, (a Mr. Chinnock,) supported the appeal motion.

Mr. Stuart and Mr. Campbell for the defendants at law, who were also defendants in the creditors' suit, (viz., Messrs. Thelluson and Dowdeswell, executors of Sir Christopher Bethell Codrington, lately deceased,) supported the Vice-Chancellor's order.

The matter was argued some time back. The leading facts and arguments, and cases cited, are stated in the judgment.

The Lord Chancellor.—In this case a judgment had been entered up, in the Court of Exchequer, against the late Sir Christopher Bethell Codrington, for a sum of 4,000*l.* to secure a sum of 2,000*l.* with interest. This was on the 16th of December, 1842. Sir Christopher died in the month of February following; and on the 19th of April, 1843, a *scire facias* was sued out to revive the judgment against the executors. They appeared to the writ. On the 2nd of May, a declaration was delivered to them, with notice to plead in four days, and on the following day, the 3rd of May, this bill in chancery was filed by the plaintiff, on behalf of himself and the other creditors of the testator, and notice of it was

served on the attorney in the proceeding in the *scire facias*. Some irregularity appeared to have taken place in the declaration at law, which rendered an amendment necessary. The amendment was made by leave of the court, and the defendants were allowed two days to plead after the amendments. Accordingly, on the 13th of May, two days after service of the amended declaration, they put in a plea of *plene administravit*. On the 11th of May, a decree was obtained, and notice of it was given at the same time that the plea was delivered. On the 17th of May, issue was joined in the action, and notice of trial was given for the first sittings in Trinity Term, 1843; and on the 26th of May, and before the trial, the injunction issued.

It did not appear, supposing the question to be material in the case, that as the injunction was obtained before verdict, there had been an unjustifiable delay on the part of the defendants at law. The declaration was not delivered until the 2nd of May, and on the following day notice of the filing of the bill was given, and before the time of pleading had expired the decree was obtained. There appeared indeed to have been an interval of a few days between the date of the decree (the 11th of May) and the motion for the injunction (on the 26th), but that interval was accounted for by the fact that the Courts of Chancery did not sit on those days, Easter Term having terminated on the 11th, the day the decree was obtained.

But then it was said, that as the executors had put in a plea of *plene administravit*, the plaintiff ought to have been permitted to go to trial in order to falsify that plea, as it was clear from the affidavits, that the plea was false in fact. The cases of *Terwest v. Featherby*<sup>a</sup> and *Brook v. Skinner*<sup>b</sup> were referred to in the course of the argument. These cases, however, were not authorities to be relied on for the principle, to support which they were cited, because Lord Eldon, who decided them, afterwards stated distinctly, in the case of *Lord v. Wormleighton*<sup>c</sup> that he had a wrong notion of that principle when those judgments were pronounced. It was clear that on a plea of *plene administravit*, if a verdict went for the plaintiff, the judgment must be *de bonis testatoris* only, and for a sum not exceeding the value of the testator's goods found to have been in the hands of the executors. The principle on which those two cases proceeded altogether failed, because it was assumed, incorrectly, that the judgment must be *de bonis testatoris, et, si non, de bonis propriis*. It was quite true that if goods to the amount of the value found by the jury were not taken by the plaintiff, the executors on a *devastavit* might be held personally liable to make up the deficiency; but when the amount was satisfied out of the property of the executors, they would be entitled to an equivalent out of the assets of the testator, on a proof of such a payment.<sup>d</sup> The result, therefore, is,

<sup>a</sup> 2 Meriv. 480.

<sup>b</sup> Id. p. 481 n.

<sup>c</sup> Jacob 148.

<sup>d</sup> Co. Litt. 283 a.

that if the action was allowed to go on to judgment, and execution taken on the assets found, those assets would be withdrawn from the funds of the testator which were properly divisible among the whole of the creditors.

But, independently of the general question, it was to be observed, that as the plea was not filed till after the decree was obtained, it was obviously filed for the purpose only of enabling the executors to make a motion to stay the proceedings. Now, if the executors had suffered judgment by default, as they might have done, execution would have issued before the motion was made. That was, therefore, not a sufficient ground for stopping the interference of this court by injunction. *Fielden v. Fielden*; <sup>1</sup> *Dyer v. Kearsley*.

The court, in cases of this description, required affidavits to be filed by the executors, to satisfy it of the state of the assets of the testator, before it stayed proceedings taken against them at law: such affidavits have been made here. I have read those affidavits, and I am satisfied with the account given by the executors of the state and nature of the testator's property, and that they had done everything to realize the assets that could be reasonably required of them. The order of the Vice-Chancellor must be affirmed, and the appeal motion refused, with costs.

*Vernon v. Thelluson*, 12th of Nov. 1844.

#### Vice-Chancellor of England.

[Reported by E. VARSITTART NEALE, Esq., Barrister at Law.]

#### PRACTICE.—39TH ORDER OF 1841.

*Held, that the court has not jurisdiction to extend the time limited by this order for setting an objection for want of parties down for argument.*

This was a motion for leave to set down the cause, under the 39th order of 1841, upon an objection for want of parties, though the 14 days limited by the order had expired. An affidavit was produced explaining the cause of the delay, which appeared to have arisen from the great length of the answer.

*Bagshawe* for the motion.

*Lloyd* contra.

His Honour said, it appeared to him to be a question whether the court had the power to grant the application. The court had no power to decide the question as to want of parties, upon the answer, before the hearing of the cause, except so far as the order gave it. And it seemed to him that the court had not, under the order, the power given it, except a certain thing had been done, which here had not been done.

*Bagshawe* afterwards produced the case of *Kershaw v. Clegg*, 1 Turner & Phillips, 120, as one in which Lord Lyndhurst had assumed

jurisdiction to enlarge the time limited by the order.

But *Lloyd* suggesting that the order in that case had been made by consent, his Honour ordered the registrar to make inquiry into the circumstances under which it had been obtained. And as, upon inquiry, it appeared that the order had been made by consent, his Honour said that in that case he must be guided by his own judgment; and therefore refused the application.

*Calvert v. Gandy*, Dec. 12th & 14th.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### PRACTICE.—SWEARING AFFIDAVIT.—JURAT.

*The jurat of an affidavit, on which a certiorari was granted to bring up an order of sessions was "sworn at B., this 8th day of February, 1844, signed W. Munton, a commissioner of the court of Queen's Bench," omitting the words "before me." Held, that the omission of the words "before me," was a fatal objection to the affidavit.*

*In the body of the affidavit there was a reference to a notice "hereto annexed," which was, This is the notice referred to in the annexed affidavit sworn before me, this 8th day of February, 1844, signed W. Munton. Held, that the defect in the jurat of the affidavit could not be supplied by reference to the annexed notice.*

A CERTIORARI had been obtained to bring up an order of sessions for the removal of a pauper. The following affidavit, with the notice annexed, was filed on obtaining the writ of certiorari. "In the Queen's Bench, Charles Egg of Banbury, in the county of Oxford, clerk, &c., maketh oath and saith, that he attended at the last Michaelmas quarter sessions of the peace for the county of Oxford, and was present when a certain appeal against an order made by two justices of the said county of Oxford, touching the removal of Thomas Hemmings and his daughter Elizabeth, from the parish of Bloxham in the county of Oxford, to the township of Epwell in the same county, came on to be heard; and that on such hearing, an order was made quashing the said order, but subject to the opinion of the Court of Queen's Bench; and that J. Loveday, Esq., and the Rev. C. F. Wyatt, clerk, two of her Majesty's justices of the peace for the county of Oxford, were also present at the hearing of the said appeal, and were two of the justices making the said order of sessions: and that he, the deponent, did, on the 6th day of February instant, serve the said J. Loveday and C. F. Wyatt with true copies of the notice hereto annexed, by delivering a copy of such notice to the said C. F. Wyatt personally, and by deliver-

<sup>1</sup> 1 Sim. & Stu. 255.

<sup>2</sup> 2 Meriv. 482 n.

ing another copy of such notice to a servant of the said J. Loveday, at his dwelling-house at W., in the said county of Oxford. Sworn at Banbury, in the county of Oxford, this 8th day of February, 1844. William Munton, a commissioner of the Court of Queen's Bench."

The notice referred to in the affidavit was annexed, with the following statement at the foot of it. "This is the notice referred to in the annexed affidavit of Charles Egg, sworn before me, this 8th day of February, 1844. Win. Munton."

A rule nisi was obtained for quashing the certiorari, on the ground of the insufficiency of the jurat of the affidavit, because it did not appear to have been sworn before the commissioner, pursuant to the statute 29 Car. 2, c. 5, s. 2.

Mr. Keating and Mr. Pashley, showed cause.

The objection to the affidavit is, because the words *before me* are omitted in the jurat. This omission does not vitiate the affidavit, or at all events, the defect is cured by the notice annexed to, and referred to in the affidavit. It must appear to the court that the affidavit was sworn before a proper authority, and it is sufficient if this can be collected from all the documents produced. In *Regina v. Silkstone*,<sup>a</sup> a similar objection was taken; there the words in the jurat were, "before me," instead of "before us," two justices having been necessarily present, and the court held, that being a judicial act everything must be presumed to have been rightly done. It is said that perjury could not be assigned on this affidavit, but on the authority of *Rex v. Emden*,<sup>b</sup> parol evidence would be admissible, to show that it was properly sworn. (Mr. Pashley was here stopped by the court.)

Mr. Pigott, contra.

The omission of the words "before me," is a fatal objection. The proceedings are *coram non iudice*, and perjury could not be assigned. No jurisdiction appears on the face of the affidavit, because it does not purport to have been sworn before the commissioner. There are two parties to an affidavit, the one who swears to the contents, and the commissioner before whom the affidavit is sworn. The commissioner derives all his authority from the stat. 29 Car. 2, c. 5, s. 2, and it should appear that the affidavit was sworn before him. The jurat is a very important part of an affidavit, and should be perfect as showing the jurisdiction of the person administering the oath. In *Reg. v. Silkstone*,<sup>c</sup> there was merely an ambiguity, here there is a want of jurisdiction. The defect in the jurat of the affidavit cannot be cured by what takes place afterwards. If reference can be made to the notice to explain this affidavit, the court may be called upon to travel over any number of documents to see if a previous affidavit was properly sworn. In *Reg. v. Shipston-upon-Stowe*,<sup>d</sup> an attempt was made

to connect examinations taken on making an order of removal, so as to show jurisdiction. Lord Denman, J. C., said, "I think we ought not to be left to presume anything as to parties having authority to administer an oath." In *Rex v. The Justices of the West Riding*,<sup>e</sup> it was held, an affidavit must show where it was sworn. In *Osborn v. Tatum*,<sup>f</sup> an affidavit was held bad as not entitled of any court. *Howard v. Brown*,<sup>g</sup> decides that it must appear that the person before whom the affidavit is sworn is a commissioner. *Houldon v. Fasson*,<sup>h</sup> and *Pardoe v. Tirrell*,<sup>i</sup> were also cited.

Mr. Pashley in reply.

The rule is laid down in *Rex v. Whiston*.<sup>j</sup> [Coleridge, J. Suppose this had been the case of a marksman, and the jurat contained no statement of its having been read over to him.] There is a prescribed rule for a case of that sort, which the court carries out most strictly; but there is no rule as to this point. *Rex v. Witney*,<sup>k</sup> *Doe d. Vanney v. Gore*,<sup>l</sup> *Daley v. D'Arcy Mahon*,<sup>m</sup> *Burdekin v. Potter*.<sup>n</sup> At all events, if the defect in the jurat should be thought fatal, an amendment will be allowed as in *Ex parte Hall*,<sup>o</sup> in which case an affidavit was sent back to be made perfect, where a commissioner had by mistake omitted to insert his own name in the jurat. See also as to amendment, *Downing v. Jennings*,<sup>p</sup> *Ex parte Smith*.<sup>q</sup>

Lord Denman, J. C. — In all cases of mere technical objections, our first inclination is to get over them if possible, so that the merits of the case may be investigated. But we must abide by positive rules, and there is no rule more wholesome and proper than that the jurat of an affidavit should state that which is essential to its validity, namely, that the oath was taken before a person who had proper authority to administer it. This rule is plain and obvious, and there is no difficulty in observing it, and it is consistent with the constant course of precedents. No direct authority has been cited the other way. Cases have been found where the courts have sometimes departed from the strict rule, in order to adopt that which under the particular circumstances, they considered a compliance with it; but the variety of these decisions is with me a strong reason for requiring the jurat to be precise and certain. The language of the court in *Rex v. The Justices of the West Riding*,<sup>r</sup> is very important, that "to dispense with these forms is only to get into uncertainty and mischief, and by a straining of jurisdiction, to help parties through that which they ought to look to themselves;" and if we should in this

<sup>a</sup> 2 Q. B. R. 526.

<sup>b</sup> 9 East. 437.

<sup>c</sup> 2 Q. B. R. 520. <sup>d</sup> 1 New. Sess. Cas. 230.

<sup>e</sup> 3 M. & S. 493.

<sup>f</sup> 1 B. & P. 271.

<sup>g</sup> 4 Bing. 393.

<sup>h</sup> 6 Bing. 236.

<sup>i</sup> 2 Dowl. N. S. 903.

<sup>j</sup> 4 Ad. & Ell. 607.

<sup>k</sup> 5 Ad. & Ell. 191.

<sup>l</sup> 2 M. & W. 320.

<sup>m</sup> 6 Dowl. 192.

<sup>n</sup> 1 Dowl. N. S. 134.

<sup>o</sup> 8 Law, J. N. S., Q. B. 211.

<sup>p</sup> 5 Dowl. 373.

<sup>q</sup> 2 Dowl. 607.

<sup>r</sup> 3 M. & S. 494.

instance depart from the rule we should invite a great degree of negligence. The omission of the words "before me," seems to me to be an inherent defect in the affidavit, and when these defects of jurisdiction are brought to our notice, I do not think we can avoid giving effect to them. The result of our decisions will be to cause for the future more care and greater accuracy in these documents, and less occasion for such applications. I think that in the case of *Ex parte Hall*,<sup>1</sup> too much indulgence was allowed; and that in the case of *Downing v. Jennings*,<sup>2</sup> the words "before me" being struck out, did not form part of the jurat when the words "by the court were substituted.

**Mr. Justice Williams.** I am of the same opinion. I think that the jurat of an affidavit should clearly be such as is required by the act of parliament. I think it would be an unwise and an unsafe mode of proceeding to sustain one instrument by reference to another. Looking to the affidavit and to that alone, it appears to me open to all sorts of doubt and uncertainty.

**Mr. Justice Coleridge.** This appears to me not simply an irregularity, but something which goes clearly to the jurisdiction, being of the very essence of the swearing. We are asked to refer to another instrument; if we were to admit that to be done in this instance, we might be called upon in others to look at some statements made at any time afterwards. I think we must look to the affidavit alone. My first impression was, as well as his lordship's, to treat this as a matter of little importance, as being an unintentional omission. I think, however, we ought to hold these things strictly, both as to statements and circumstances: affidavits are directed to be taken before a commissioner having authority to take them; but it is perfectly consistent with this statement, that Munton was not the commissioner before whom the affidavit was sworn. If under all these circumstances of doubt and ambiguity we were to hold this statement sufficient, we should, I expect, never see an affidavit again without these words omitted.

**Mr. Justice Wightman.** The affidavit must be sworn before a person authorised to take it; it is perfectly consistent with the statement in this affidavit that it might have been sworn before a person having no authority to administer an oath. I had some doubt at first as to the suggested reference to the other instrument, but that would be productive of much mischief, and would enable defects in necessary statements to be supplied by declarations made at any subsequent time, and would supersede the necessity of making such statements in future.

Rule absolute without costs.

*The Queen v. The Inhabitants of Bloxham.*  
Queen's Bench, M. T., 1844.

<sup>1</sup> 8 Law J., N.S., Q.B. 211.    <sup>2</sup> 5 Dowl. 373.

### Queen's Bench Practice Court.

[Reported by E. H. WOOLLYCE, Esq., Barrister at Law.]

#### ATTORNEY.—ASSIGNMENT OF ARTICLES.— REGISTRATION.—SERVICE.

*Where an articulated clerk inadvertently omitted to enrol the assignment of his articles within the prescribed period, the court, under the 7 & 8 Vict. c. 86, s. 2, ordered the service under the assignment to be computed from the date of its execution, instead of from the time of its enrolment.*

**F. V. Lee** moved, on behalf of *Charles Cunningham*, that the service under the assignment of his articles of clerkship might be computed from the date of the execution of such assignment, and not from the time of the enrolment thereof. The affidavit stated that the applicant had been articulated on the 7th January, 1839, and his articles enrolled on the 6th December, 1839; that on the 25th May, 1841, the articles had been assigned, but that through inadvertency such assignment had been omitted to be enrolled within the six months allowed by the act; that the assignment was enrolled, with the proper affidavit, on the 15th May last, viz., before the passing of the act 7 & 8 Vict. c. 86; that his service under the said articles and assignment terminated on the 17th June last, and that he had given the requisite notices for admission in Hilary Term next. An unsuccessful application to register the assignment of these articles, *nunc pro tunc*, had been made in Easter Term last; and the motion was now renewed under an act passed since, viz., the 7 & 8 Vict. c. 86, which, it was submitted, empowered the court to grant the application. The 2nd section of the act, after reciting that certain persons who have become bound by contract, executed before the passing of this act, may have enrolled the same after the expiration of six months from the date thereof, &c., provides that it shall be lawful for any of her majesty's superior courts of law or equity at Westminster, in any case where any such contract, executed before the passing of this act, shall not have been enrolled within six months from the date thereof, or shall not be enrolled within the time by this act allowed, to order and direct, either before or after the contract shall in any such case have been enrolled with the proper affidavit by law required, that the service under such contract shall be reckoned to commence and be computed from the execution of such contract, or from any subsequent period prior to such enrolment, as such court may think fit, &c.

**Patteson, J.**—Take a rule.

Rule granted.

*Ex parte Cunningham.* Q. B. P. C. M. T., 1844.

\* See 28 L. O., p. 14.



## COMMON LAW CAUSE LISTS.

Hilary Term, 1845.

## Queen's Bench.

New Trials remaining undetermined at the end of Michaelmas Term, 1844.

Michaelmas Term, 1844.

*Essex.*—Corporation of Colchester v. Brooke, (2nd case.)

Michaelmas Term, 1843.

*Middlesex.*—Rogers v. Brenton; Willoughby v. Willoughby.

*Norfolk.*—Berney v. Read.

Hilary Term, 1844.

*Middlesex.*—Bells, executrix, v. Thick.

*London.*—Gillett v. Whitmarsh and others; Hart, administrator, &c. v. Stephens; Bate and another v. Rawlinson; Yates, a pauper, v. Tearle and others.

Easter Term, 1844.

*Middlesex.*—Duncan v. Louch; Same v. Same; Doe d. Tebbatt and others v. Brent and others; Holloway v. Turner and another.

*London.*—Rolle v. Reynolds the elder; Martin v. Wright; Cobb v. Beck and another.

*Kent.*—Allen v. Hayward; Doe d. Muston v. Gladwin; Mayor, &c. of Rochester v. Levy.

*Surrey.*—Hopkinson v. Lee; Baynton v. Seal and another.

*Bucks.*—Doe d. Brise v. Brise.

*Cambridge.*—The Queen v. Mortlock.

*Chester.*—Wharton v. Walton; Worthington, administrator, v. Grimsditch.

*Stafford.*—Bromley v. Spurrier.

*Gloucester.*—Holford, Esq. v. Bailey, Esq.; Green v. Payoe and others.

*Hants.*—Doe d. Edney and others v. Wise.

*Devon.*—Mayor, &c. of Saltash v. Finnymore; Woolcombe v. Sleeman.

*Somerset.*—Gale v. Bernal.

*Northampton.*—Simons v. Spier.

*Lincoln.*—Mayfield v. Robinson; Doe d. Swinton and others v. Cook.

*Notts.*—Spencer v. Carlen.

*Derby.*—Roe d. Vevera, Clk. and others v. Ault; Winterbottom v. Ingham.

*Warwick.*—Elliott v. Blackwell.

*Carlisle.*—Topping v. Hayton.

*York.*—Doe d. Corporation of Richmond v. Morphet; Gibson v. Call and others; Adams, a pauper, v. Hartley; Ferrand v. Milligan; Dawson v. Gregory.

*Liverpool.*—Webster v. Proller; Hargreaves and another v. Wood and another; Pow v. Taunton and another; Aikia v. Faith and others.

Tried during Easter Term, 1844.

*Middlesex.*—Littlechild v. Banks; Brooks v. Bookett; Same v. Same; Skilbeck and another v. Garbett.

Trinity Term, 1844.

*Middlesex.*—Harrison v. Varty and another; Same v. Same; Gladman v. Plumer.

Tried during Trinity Term, 1844.

*Middlesex.*—Mercer v. Bartlett; Croucher v. Currie and another; Moses v. Jacobson.

Michaelmas Term, 1844.

*Middlesex.*—Belcher and others v. Gummow; Macerthy v. Varty and another, (to come on for argument with Harrison v. Varty, Trinity Term; ) Same v. Same; Ditto; Bennett v. Duncan; De Medina v. Grove and others; Same v. Same; The Queen v. Waller; The Queen v. Baren de Bode.

*London.*—De Freis v. Littlewood and another; Exley v. Tussell; Bodmer v. Butterworth and another.

*Northampton.*—Sutton v. Macquire.

*Notts.*—The Queen v. Inhabitants of Hickley.

*Leicester.*—Wood v. Dixie, Bt.

*Warwick.*—Cooper v. Harding and another; Same v. Same.

*Hants.*—Doe d. Edney and others v. Benham; Same v. Billett.

*Devon.*—Doe d. Clarke v. Smarridge; Dovill v. Jove; Schank v. Beard.

*Cornwall.*—Richards v. Symons.

*Somerset.*—Atwood v. Jolliffe and another; Doe d. Earl of Egremont v. Langdon; Alford v. Ashford.

*Bristol.*—Gale v. Lewis.

*Norfolk.*—Corporation of Thetford v. Tyler.

*Denbigh.*—Oldfield v. Dalrymple.

*Chester.*—Collier v. Clarke and another.

*Oxford.*—Exeter College v. Butler and others, in trespass; Doe d. Pulker and wife, and others v. Walker and others.

*Worcester.*—Doe d. Blayney and others v. Savage and another; Bate and another v. Blurton and another, executors, &c.

*Stafford.*—Hilton v. Earl Granville.

*York.*—The Queen v. Rd. Clearby; Lockwood v. Wood; Musgrove v. Emerson.

*Durham.*—Elliott and another v. Stobart and others; Wilson v. Anderson.

*Westmoreland.*—Webster v. Wilson.

*Liverpool.*—The Queen v. Corporation of Manchester; Wharton v. Wright; The Queen v. Liverpool and Manchester Railway Company.

*Essex.*—Doe d. Copland and others v. Burrell; Doe d. Cozens v. Cozens.

*Kent.*—Bracegirdle v. Peacock and another; Doe d. Jacobs v. Phillips and others.

*Surrey.*—The Queen v. Sewell.

*Glamorgan.*—Burgess v. Taff Vale Railway Company.

*Pembroke.*—Doe d. Butler and others v. Lord Kensington and others.

*Radnor.*—Doe d. Woodhouse v. Powell.

Tried during Michaelmas Term, 1844.

*Middlesex.*—Hudson v. Smith and wife; Paine v. Guardians of Strand Union.

SPECIAL PLEAS AND DEMURRERS.

Hilary Term, 1845.

Adams v. Adams, special case.

Fletcher the younger v. Calthorp and another, dem.

Van Sandau v. Turner and another, dem.

Planché v. Hooper, special case.

Lane and others v. Hooper and another, dem.

Kendall v. Corles, dem.

Baker, administratrix v. Beadle the elder, dem.

Graham v. Jackson, special case.

Graham and others, assignees, &c. v. Wirberby and another, special case.

Pargeter and others v. Harris, dem.

Perry v. Fitz Howe, dem.

Green and another, assignees, v. Wood and another, special case.

Ekin and another v. Flay, special case.  
Graham and others, assignees, &c. v. Syner, special case.

Prothero v. Phelps, dem.

Mortimore v. Moore and another, dem.

Gregory v. East India Company, dem.

Miles, Treasurer, &c. v. Bough, dem.

Scarpellun v. Aitchison, dem.

Orgar v. Howe, dem.

Doe d. Wood and another v. Clarke, special case.

The St. Katherine Dock Company v. Higgs, special case.

Hanner v. Eyton, case from new trial paper.

Kennett and Avon Canal Navigation v. Gt. Western Railway Company, special case.

Fennir v. Anderson, dem.

Teece v. Brown and others, in replevin, dem.

Robinson v. Marchant, dem.

Elwell v. Birmingham Canal Company, special case.

Nichols v. Stretton, dem.

Peake v. Screech, dem.

Belcher and others, assignees, v. Campbell and another, special case.

Selby v. Brown, dem.

Edmunds v. Pinnegar and others, dem.

Doe d. Dand v. Thompson, special case.

Vine v. Bird, dem.

Rance v. Dyball, dem.

Taylor v. Stendall, dem.

Mayor, Litchfield, v. Simpson, dem.

Wright v. Greenacre, dem.

Clarke and others v. Tinker, special case.

Penny v. Gabriel and others, dem.

Findon v. M'Laren the younger, dem.

Pilkinhorn v. Wright, dem.

Nicholas v. Wright, dem.

Boulet v. Maire, dem.

Shield and another v. Lornie, dem.

Thorogood v. Robinson the elder, dem.

Ward and others v. London and Blackwall Railway Company, dem.

Myers v. Parfett, sued, &c., dem.

Simons v. Lloyd, dem.

Fariell v. Manchester, Bolton, and Bury Canal Navigation, special case.

Goaling v. Veley and another.

Roe dem. Jackson and others v. Hartsborn and others, special case.

Harris v. Reynolds, dem.

Morris v. Cork, dem.

Page v. Hatchett, dem.

### Common Pleas.

*Remanet Paper of Hilary Term, in the 8th year of the reign of Queen Victoria, 1845.*

### Enlarged Rules.

To 1st day.—Abbott v. Douglas.  
To 5th day.—Hemsworth v. Brian.  
To 6th day.—Jackson and another v. Galloway.

### New Trials of Trinity Term last.

*Middlesex.*—Eliot v. Allen and others; Gilling v. Dugan.

*London.*—Walton v. Rumsey; Gerish v. Chartier.

### New Trials of Michaelmas Term last.

*Middlesex.*—Mumony v. Paul; Richardson, Knt. v. Morse, sued as, &c.; Thomas v. Dunn.

*London.*—Johnson and others v. Nicholls; Burton v. Knight and another; Ross v. Moses; Goodall v. Polhill.

*Stafford.*—Wood v. Wedgwood.

*Gloucester.*—Wilkes v. Hopkins and others.

*Notts.*—Cocking v. Ward.

*Warwick.*—Fowler v. Russell.

*Durham.*—Charlton and another v. Gibson.

*Liverpool.*—Bentley v. Fleming; Williamson v. Page.

*Surrey.*—Blackham v. Pugh.

*Suffolk.*—Lewis, executor v. Bailey.

*Chester.*—Cole v. Aspinall; Davies v. Aston, Knt.

### CUR. AD VULT.

Coxhead v. Richards.

Pontifex and another v. Wilkinson.

Lunn v. Thornton.

Pien v. Grazebrook and another, argued 2nd June, 1845.

Grant and others v. Hunt, pub. off., argued 3rd May, 1844.

The Fishmongers' Company v. Robertson and others.

Bentley v. Goldthorpe and another.

Walker v. Petchell.

Cameo, Knt. v. Wannier.

Thompson and another v. Small.

### Appeal Cases for Judgment.

*Lancaster, South Division.*—Eckersley v. Barker.

*Yorkshire, West Riding.*—Baxter v. Overseers of Doncaster.

*Lichfield, City.*—Marshall v. Bown.

*Demurrer Paper of Hilary Term, 8th year of the reign of Queen Victoria, 1845.*

Saturday	. . . Jan. 11	} Motions in arrest of Judgment.
Monday	. . . 13	
Tuesday	. . . 14	
Wednesday	. . . 15	
Thursday	. . . 16	
Friday	. . . 17	Special arguments.

Legge v. Boyd.

Bittleston and another v. Tinimis.

Roberts v. Taylor and others.

Phillips v. Macdonald and others.

Stocker v. Warner and others.

Blazdell v. Chatterton.

Rankin v. De Medina.

Fenwick v. Blackhouse.

Cumberledge and others v. Smither.

Same v. Blecknell.

Manning and another v. Irving.

Jacobs v. Fiaber.

Barnes v. White and another.

Barns v. Price.

Wednesday, Jan. 22. Special arguments.

Friday, Jan. 24. ditto.

### Baroque of Pleas.

### NEW TRIAL PAPER.

For Hilary Term. 8th Vict. 1845.

### For Judgment.

Moved for Easter Term, 1844.

*Liverpool, Mr. Baron Rolfe.*—Rogers and another v. Maw.

(Heard 28th May, 1844.)

Moved Trinity Term, 1844.

*Middlesex*, Mr. Baron Parke.—Heath v. Unwin.

(Heard 12th Nov. 1844.)

For Argument.

Moved Hilary Term, 1844.

*London*, Lord Abinger.—A. J. Acraman v. Cooper and others.

25th April 1844, enlarged until after New Trial had in W. E. Acraman v. Cooper and others.

Moved Michaelmas Term, 1844.

*Middlesex*, Lord Chief Baron.—Chappell v. Purday, on affidavits.

(15th Nov. 1844, part heard.)

*Middlesex*, Lord Chief Baron.—Veysey v. James; Russell v. Sedson and others.

*Middlesex*, Mr. Baron Rolfe.—Spiller v. Mason; Wood v. Leadbitter; Sinclair the younger v. Sinclair; Bartlett v. Dimond.

*London*, Lord Chief Baron.—Esdaile and others v. Lund; Acraman, W. E. v. Cooper and others; Alexander v. Pratt and others; McIntyre v. Miller and others; Nordenstrom v. Pitt; Elkin v. Janson; Hall and another v. Poyser; Redman v. Wilson; Redman v. Hay.

*York*, Lord Chief Baron.—Stables v. Tuting and another; Clark v. Royston.

*Durham*, Mr. Justice Cresswell.—Collinson v. Newcastle and Darlington Junction Railway Company. *Newcastle*, Lord Chief Baron.—Chapman v. Annett.

*Lancaster*, Mr. Justice Cresswell.—Pollitt v. Forrest and others.

*Liverpool*, Mr. Justice Cresswell.—Pitts v. Beckett. *Common Pleas, Lancaster*. *Liverpool*, Mr. Justice Cresswell.—Doe d. Oulton and others v. Oulton and others; Eccles and another v. Harper; Smith v. Boulcher; Kirkpatrick and another v. Tattersall; Cooke v. Reddillien; Crellin v. Calvert; De Bernardy v. Grimston.

*Maidstone*, Mr. Baron Gurney.—Coomber v. The South Eastern Railway Company.

*Lewes*, Mr. Baron Parke.—D'Arny v. Chesneau. *Lewes*, Mr. Baron Gurney.—Parry v. Nicholson, on affidavits.

*Buckingham*, Mr. Justice Williams.—Uthwatt, Esq. v. Elkins and others; Liddington v. Palmer and others, on affidavits.

*Huntingdon*, Mr. Justice Williams.—Chowns v. Brown.

*Cambridge*, Mr. Baron Alderson.—Charinton v. Johnson.

*Ipswich*, Mr. Justice Williams.—Mills v. Goff.

*Norwich*, Mr. Baron Alderson.—Worth v. Terington; Doe d. Dudgeon and another v. Martin and others.

*Cardiff*, Mr. Baron Rolfe.—James v. Williams.

*Northampton*, Mr. Justice Coltman.—Watson v. Bodell; Ekins v. Hunter, (on affidavits.) *Nottingham*, Mr. Justice Coltman.—Harrison v. Wright.

*Derby*, Lord Denman.—Ashmore and another v. Bramatt and another; Lister v. Hunt.

*Leicester*, Mr. Justice Coltman.—Lord Stamford v. Dumber and others.

*Warwick*, Lord Denman.—Geach and others, assignees, v. Ingall.

*Worcester*, Mr. Serjeant Atcherly.—Benbow v. Jones; Biss v. Arkell; Doe d. Woodward v. Deans.

*Shrewsbury*, Mr. Serjeant Atcherly.—Amphlett, assignees, &c. v. Garbett.

*Gloucester*, Lord C. J. Tindal.—Pitt v. Harrison and another.

*Devizes*, Mr. Justice Wightman.—Hayward v. Hayward; Frude and others v. Powell.

*Bristol*, Mr. Justice Paterson.—Fargues v. Bradshaw; Kynaston and another, assignees, &c. v. Crouch; Doran and another, assignees, &c. v. Worboys.

*Newtown*, Mr. Justice Coleridge.—Lewis v. Read and others.

*Mold*, Mr. Justice Coleridge.—Doe d. Lloyd v. Ingleby.

*City of Chester*, Recorder of Chester.—Burkey and another v. Fletcher.

Moved after the 4th day of Michaelmas Term, 1844.

*Middlesex*, Lord Chief Baron.—Hogarth v. Penny and another, Birt v. Leigh.

#### SPECIAL PAPER.

For Hilary Term. 8 Vict., 1845.

For Judgment.

Buron v. Denman, Esq.  
(Heard 13th Nov. 1845.)

Armani v. Castrique.  
(Heard 20th Nov. 1844.)

For Argument.

Smith, Sec., &c., and others v. Hodgkinson.

To stand over until similar case disposed of in the Court of Error.

Martinez v. Denman, Esq.

Jiminez v. Same.

(These two cases to stand over until judgment given in Buron v. Denman, Esq.)

Alington v. Booth.

(Stayed by Injunction.)

Robertson v. Showler.

Williams v. Jones.

Ackerman and others v. Ehrensperger.

Gore v. Gibson.

Leaf v. Robson.

Sleade v. Hawley.

Robson v. Luscombe.

#### Peremptory Paper.

For Hilary Term. 8 Vict. 1845.

To be called on the first day of the term, after the motions, and to be proceeded with the next day, if necessary before the motions.

Smith, quitam, v. Bond.

Smith v. Green.

Dresser P. O. v. Stansfield.

Jones v. Evans and another.

Campbell v. Pownall.

Allen v. Miners, executrix, &c.

Riley v. Robinson.

Coats v. Coats, executor, &c.

Empey v. King.

Petty v. Walker and others.

## COMMON LAW SITTINGS.

Hilary Term, 1845.

## Queen's Bench.

In Term.

## MIDDLESEX.

1st Sitting, Monday . . . Jan. 13  
And until the Jury are desired to attend at the  
(Sit at Eleven.)  
2nd Sitting, Monday . . . Jan. 20  
And until the Jury are desired to attend at the  
(Sit at Eleven.)  
3rd Sitting, Wednesday . . . Jan. 29  
(At half-past Nine.)

## LONDON.

Thursday . . . Jan. 30  
(At Twelve.)

Sittings for such Undeferred and Deferred Causes  
as produce no satisfactory affidavit of Merits.

In Term in Middlesex.—The Undeferred Re-  
manets and New Causes with proper notice will be  
taken first; then will follow a limited number of  
Short Causes, and such Short Causes of Tort as  
shall have been appointed in the same way as special  
juries are for fixed days.

After Term.

## MIDDLESEX.

Saturday . . . Feb. 1  
(Sit at half-past Nine.)

## LONDON.

Monday . . . Feb. 3  
(To adjourn only.)  
Adjournment-day, Monday . . . Feb. 17  
(At half-past Nine.)

## Common Pleas.

Hilary Term, 1845.

In Term.

## MIDDLESEX.

## LONDON.

Wednesday . Jan. 15 | Friday . . Jan. 17  
Wednesday . Jan. 22 | Friday . . Jan. 24

After Term.

## MIDDLESEX.

## LONDON.

Saturday . . Feb. 1 | Monday . . Feb. 3

The Court will sit at ten o'clock in the forenoon  
on each of the days in Term, and at half-past nine  
precisely on each of the days after Term.

The causes in the list for each of the above sitting  
days in Term, if not disposed of on those days, will  
be tried by adjournment on the days following each  
of such sitting days.

On Monday the 3rd February, in London, no  
causes will be tried, but the court will adjourn to a  
future day.

## Exchequer of Pleas.

Hilary Term, 1845.

In Term.

## IN MIDDLESEX.

1st Sitting, Monday . . . Jan. 13  
2nd Sitting, Monday . . . . . 20  
3rd Sitting, Monday . . . . . 27

## IN LONDON.

1st Sitting, Friday . . . Jan. 17  
2nd Sitting, Friday . . . . . 24  
(And by adjournment,) Saturday . . . 25

After Term.

## IN MIDDLESEX.

## IN LONDON.

Saturday . . Feb. 1 | Monday . . Feb. 3  
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in  
Term, by adjournment, from day to day, until the  
causes entered for the respective Middlesex sittings  
are disposed of.

The Court will sit, during and after Term, at ten  
o'clock.

## BANKRUPTCY—DIVIDENDS DECLARED.

From 3rd to 27th Dec. 1844, both inclusive.

Andrew, T. B., Ashton-under-Lyne, Tea Dealer.  
Div. 3s. 6d.  
Appleyard, S., Manchester, Stuff Merchant. Final  
div. 3s. 1½d.  
Atkinson, M. Temple, Sowerby, Westmoreland.  
Div. 11½d.  
Austin, E. V., Paradise Street, Rotherhithe, Sur-  
geon, &c. Div. 7d.  
Bail, J., Salisbury, Cabinet Maker. Div. 6s. 8d.  
Ball, J., 20, St. George's Place, Hyde Park Corner,  
Tailor. Div. 9d.  
Balls, T., Thames Street, Iron Merchant. Div.  
1s. 11d.  
Barham, R., Emsworth, Hampshire, Linen Draper.  
Div. 2s. 6d.  
Bates, W. H., Birmingham, Factor. Div. 3s. 3d.  
Bazeley, D., High Street, Southwark, Cheese-  
monger. Div. 1s.  
Bell, R., Keighley, York, Wool Stapler. Final div.  
1s.  
Birks, E., Sheffield, Grocer. Final div. 2s. 4d.  
Boulton, E. S. & T. Addison, Liverpool, Stock Bro-  
kers. Div. ½d.  
Bradwell, J., York, Ironmonger. Final div. 4s. 9d.  
Brewer, T., Liverpool, Flag Dealer and Pavior.  
Div. 2s. 3d.  
Brooks, W. A., Newcastle-upon-Tyne, Quarryman.  
Final div. 8d.  
Brown, J. H., Duke Street, Manchester, Chymist,  
&c. Final Div. 1s. 0½d.  
Cadbury, J., New Bond Street, Cheesemonger.  
Final Div. 1s. 4½d.  
Carter, T., jun., Waltham, Leicester, Butcher.  
Div. 2s. 0½d.  
Cay, C. J., Bishopwearmouth, Coal Fitter. Final  
div. 9½d.  
Clark, J., Mincing Lane, Colonial Broker. Div. 6d.  
Courtney, J., Bristol, Banker. Div. 1s. 8d.  
Curtis, T., Stepney, Shipping Butcher. Final  
div. 1s. 8d.  
Daintry, J. S., J. Ryle, and W. R. Ravenscroft,  
Manchester, Bankers. Div. 5s. 4d. (on sepa-  
rate estate of J. S. Daintry, final div. 9½d.)  
on separate estate of J. S. Daintry and J.  
Ryle. Div. 8½d.  
Dakeyne, D., and T. Wanklyn, Manchester, and of  
Gradbath, Stafford, Flax Spinners. Final  
div. 6d.  
Dethick, W., Temple Street, Whitefriars, Lime-  
Merchant. Div. 5½d.  
Duffield, C., Bath, Grocer. Final div. 3s.

- Dunn, R., and R. D. Dunn, Wakefield, York, Corn Factors. Div. 2d. (on separate estate of R. Dunn, div. 7a. 4d.)
- Dunphy, J., Bull Inn, Burford, Oxford, Victualler. Div. 4a. 3d.
- Edwards, T. & E., Church Street, Liverpool, Linen Drapers. Div. 4a. 1d.
- Elsie, J., and W. Dixon, Kingston-upon-Hull, Corn Millers and Bakers. Final div. on separate estate of J. Elsie, 12s. 9d.; firm div. 3s.
- Forth, J., South Parade, Nottingham, Hatter, Div. 2a.
- Foster, E., Smeagate Street, Dover, Tailor. Div. 1s. 11d.
- Forster, I. G., Aldgate, High Street, Tailor. Div. 1s.
- Fothergill, J., sen., Selby, York, Apothecary. Div. 3a. 3d.
- Gibson, T., North Scale, Walney, Dalton, Lancaster, Coal Merchant. Div. 1s. 3d.
- Gleadhill, J., Oldham, Lancaster, Cotton Spinner. Interest on debts declared.
- Gregory, J., Sheffield, Manufacturer of Knives and Razors. Final Div. 1s. 8d.
- Haddock, J., Warrington, Lancaster, Bookseller. Div. 8s. 6d.
- Hall, H., Smalesmouth, Greystead, Northumberland, Farmer. Div. 2s. 8d.
- Hammond, G., sen., Havant, Southampton, Common Brewer. Div. 1s. 6d.
- Harding, W., Southampton Street, Camberwell, Grocer. Div. 7s. 8d.
- Harvey, T., Eagle Hotel, Wandsworth, Innkeeper. Div. 6s.
- Hill, W., and W. K. Wackerbarth, Leadenhall Street, Ship Agents. Div. 7d.
- Hilton, E., and N. Walsh, Over Darwen, Lancaster, Paper Makers. Div. 3d.
- Howland, R., Thame, Oxford, Auctioneer. Div. 2s. 2d.
- Hudson, J., and J. Broadbent, jun., Gale, near Littleborough, Lancaster, Calico Printers. Div. 3s. 1d. (On separate estate of J. Broadbent, jun. div. 20s., and on separate estate of J. Hudson div. 20s.)
- Jacomb, T., Barge Yard, Bucklersbury, Merchant. Final div. 11d.
- Jenkins, J., Craven Place, Old Kent Road, Carrier and Leather Seller. Div. 4s. 6d.
- Layton, J., Leeds, Fruit Merchant. Final div. 4d.
- Leighton, A., Liverpool, Merchant. Div. 7d.
- Lodge, R., Thornhill, York, Innkeeper. Final div. 2s. 6d.
- Loup, J. H., and G. Godber, Cateaton Street, Cotton Factors. Div. 3d.
- Ludd and Fenner, Fenchurch Street, Merchants. Div. 4d.
- Mallalieu, J., Stansfield Lodge, Sowerby, Halifax, Cotton Spinner. Div. 6s. 8d.
- Milner, J., Brook Street, New Road, Engine Manufacturer. Div. 1s. 6d.
- Monckmar, T. M., Bradford, York, Tobacconist. Div. 3s.
- Norman, B., and E. Buckman, Cheltenham, Ironmongers. Div. 6s.
- Ogden, A., Spotland, Rochdale, Lancaster, Sizer. Div. 5s. 9d.
- Orton, L. Box, Wilts, & E. Paxton, Long Ashton, Somerset, Builders. Final div. 5s. 9d.
- Oxley, E., jun., King's Lynn, Norfolk, Hatter and Dealer in Clothes. Div. 3s.
- Parker, J., Kingston-upon-Hull, Corn Miller. Div. 2s. 6d.
- Pemberton, J., Knosrup, Leeds, Soap Boiler. Div. 2s. 3d.
- Phillips, S., Brook Street, Hanover Square, Carpet Warehouseman. Div. 10d.
- Robertson, G., J. Garraw, and J. Alexander, Liverpool, Ship Chandlers. Div. 3d.
- Rosselli, P., Lime Street, Merchant. Div. 2d.
- Sedgwick, T., Leeds, Grocer. Final div. 4s.
- Senior, J., Lassells Hall, Kirkheaton, York, Fancy Cloth Manufacturer. Div. 2d.
- Shore, J., Rochdale, Lancaster, Flannel Manufacturer. Div. 5s.
- Smith, J., Scatcliffe Mill, Rochdale, Corn Miller. Final Div. 2a.
- Smith, E., Sheffield, Innkeeper. Final Div. 4d.
- Smith, W. B., Sudbury, Suffolk, Surgeon, &c. Div. 6s. 1d.
- Swallow, J., sen., J. Swallow, jun., and G. Swallow, Brow and Sterne Mills, Skircoat, Halifax, Corn Millers. Final div. 5d.
- Tansley, P., St. John Street, West Smithfield, Straw Plait Dealer. Div. 2a. 0d.
- Teesdale, C., and R. Tonleau, New Lambeth House, Westminster Bridge Road, Furnishing Warehousemen. Div. 12s. 6d.
- Thomas, G. D., Wem, Salop, Grocer. Final div. 10d.
- Thomas, D., Manchester, Merchant. Div. 4d.
- Thorpe, W., Thorne, York, Scrivener. Div. 1s. 2d.
- Tucker, J., late of Sutton Street, Commercial Road East, Ship Owner. Div. 6s. 8d.
- Ward, O. D., Manchester, Lancaster, Merchant. Div. 1d.
- Warren, R., Liverpool, Druggist. Div. 8d., and 4d. on account of 1st and 2nd divs.
- Watson, J., sen., and J. Watson, jun., Wath-upon-Deane, York, Common Brewer. Final div. 3s. 10d.
- Webb, W., Leamington, Warwick, Hotel Keeper. Div. 7s. 6d.
- Welldon, S. E., Cambridge, Butcher. Div. 7s. 6d.
- Wells, G. S., Ripponden Mill, Soyland, Halifax, Cotton Spinner. Final div. 7d.
- Willock, M., Huddersfield, York, Merchant. Final div. 7d.
- Wilson, J., Manchester, Warehouseman. Final div. 6s. 4d.
- Womack, G., Leeds, Cloth Merchant. Final div. 4s. penny.
- Wood, J. F., Oxford, Surgeon, &c. Div. 2s. 6d.
- Wood, H., Basinghall Street, Woollen Factor. Div. 2s.
- Yeardley & Co., Ecclesfield Mill, Ecclesfield, York, Flax Spinners. Div. 3s. 9d.
- Young, J., Aldermanbury, Laceman and Milliner. Div. 2s. 10d.

### THE EDITOR'S LETTER BOX.

WE have received a reply from H. on the Metropolis Buildings Act, which will appear next week. He maintains his original opinion on the strict construction of the act.

"An Articled Clerk," whose term of articles will expire on the 25th July next, cannot be examined in Trinity Term, except by special order; and we understand the judges are not disposed to relax the rules without strong grounds are shown.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, JANUARY 18, 1845.

"Quod magis ad nos  
Pertinet, et nescire malum est, agitur."

HORAT.

**THE ALTERATIONS MADE IN  
THE LAW OF JOINT STOCK  
COMPANIES.**

No. V.

WE have now shown what are the powers and privileges proposed to be conferred on joint stock companies which are registered "completely" under the act, and we have seen that it is absolutely necessary for all companies, formed after the 1st of November, 1844, in order to be able to carry on business at all, to obtain a certificate of complete registration.

But these powers and privileges *may* also be obtained by companies existing previously to that period; but then they must also be subject to the regulations and restrictions imposed by the act. And their deed of settlement must be rendered conformable to the provisions of the act. (s. 59.) They must also pay the fees provided for by the act. (s. 59.)

Sections 66—68 are important clauses, applicable to companies completely registered. By s. 68 it is enacted, that in any action or suit against such company, every judgment, decree, or order shall take effect and execution, not only against the property of the company, but also, if due diligence shall have been used to obtain satisfaction, by execution against the person, property, and effects of any shareholder for the time being, or of any former shareholder of such company, in his individual capacity, if he was a shareholder at the time of the contract on which the judgment, &c. has been obtained: but it

is provided, that "no execution shall be issued on such judgment, decree, or order against the person, property, or effects of any former shareholder of such company *after the expiration of three years next after the person sought to be charged shall have ceased to be a shareholder of such company.*" This is, therefore, to this extent a limitation of liability. Sec. 67 provides for the reimbursement of shareholders against whom execution has issued, and for contribution by other shareholders. Sec. 68 regulates proceedings in execution against the person or property of a shareholder.

The other clauses of the act are formal clauses, necessary for carrying it into execution, and we need not advert to them further than to observe, that the registrar of joint stock companies is to make an annual report to the Board of Trade as to the progress of the registration of companies and other matters under the act.

The main question, then, is, is it advisable for existing companies, established before the 1st of November, 1844, to obtain complete registration? And we are bound to say that we think there are very few cases in which it will be advisable for them so to do. The only immediate benefit that they will obtain is the power to sue and be sued, and this, it has always been understood, parliament has hitherto been willing to grant to any company applying. In most deeds of settlement provisions similar to many of the clauses of this act are usually inserted, as we have already pointed out; and we have been at a loss to discover what are the benefits conferred by the act which will

compensate for the great restriction and severe control which will be established over every company which is completely registered. In many respects, it appears to us, with all our desire to see joint stock companies properly regulated, there would be a needless interference in and supervision over the concerns of the company. We very much doubt, indeed, whether any company could long go on, subject to the provisions of the act: and unless it was the intention of the legislature to stop entirely the formation of new companies, we are at a loss to account for many of these restrictive clauses. On the whole, we are reluctantly compelled to place this act among that portion of the acts of last session *which must be revised and materially amended, to work at all*. There is rather a serious list of such measures, and (among others) to the Act abolishing Imprisonment for debt, and that relating to the Transfer of Property, we must now place *the act to regulate joint stock companies*, the intention of which is unquestionably good, but the execution of which is decidedly faulty; and we think all our readers having any experience in the carrying on and practical working of a joint stock company will agree with us, if they will only read over the preceding articles of this series contained in the present volume.

## THE RUMOURED CHANGES IN THE LAW.

THE newspapers have this week contained a variety of rumours as to expected law changes, which we can trace to no good foundation. We conceive them to be at all events premature. It has indeed been lately said that it was the wish of Sir N. Tindal to retire from the arduous duties which he so well performs, but we believe that there is no reason for this supposition. We deeply regret to hear that Sir William Follett is still an invalid, and that, although he has comparatively good health at present, it is feared that he may not be able to return to the complete discharge of his duties. Let us hope, however, that he may not be entirely lost to his country. With respect to the other statements, we cannot say that we are in possession of any information which supports them. And as to the retirement of the Lord Chancellor, which is the key-stone of all the other removals, we can only say that the retirements of

all Chancellors have been predicted a hundred times before they happened. We believe there is no indisposition on the part of his lordship to resign, if a competent successor were found. In the mean time, he lives "a prosperous gentleman." In the event of such a step being taken, we conceive that, in the opinion of all, no person could at present be found so competent to discharge all the duties of the office as Mr. Pemberton Leigh. If any immediate vacancy takes place on the bench, it will not be in the quarters referred to.

## NOTES ON EQUITY.

### LIABILITY OF TRUSTEES.

WE have repeatedly called attention to that large class of cases in which trustees will be held responsible, without any wilful default or fraud of their own. Lord Cottenham laid down the rule, as to this, that "if the line of duty be not strictly pursued, and any part of the property be invested by such personal representative in funds, or upon securities not authorised, or be put within the control of persons who ought not to be entrusted with it, and a loss is thereby eventually sustained, such personal representative will be liable to make it good." *Clough v. Bond*, 3 Myl. & C. 496. A still later case is a forcible instance of this rule. We give it as stated by Lord Langdale, M. R.: "The defendant was the trustee of the plaintiffs. A sum of money came into his hands, a portion of which he thought it would be most beneficial to the family to lay out on mortgage security. This could not be perfectly done without some delay. Pending the interval, the defendant laid out a considerable portion of the money in the purchase of exchequer bills. \* \* \* He, however, unfortunately left them entirely under the control of other parties, and entrusted to them the possession. Instead of securing them in the ordinary mode, he permitted them to remain undisturbed in the hands of brokers, who in some respects acted as bankers, who had the absolute power of disposing of them. \* \* \* It is said that this was just the same thing as if the defendant had left a balance in the hands of the bankers. It is to be observed that he did not do so; and I don't think it is necessary, on this occasion, to consider how long a trustee may keep money, which he is desirous to employ for a particular purpose, in the hands of a banker. When the defendant had purchased exchequer bills, he might have kept them perfectly safe, either in his own hands, or he might have kept them in the hands of those persons, distinguishing them, however, from the other property they had. \* \* \* The defendant has made himself liable, because he omitted to take due and proper precaution for the protection of the fund." A decree was therefore pronounced against him, with costs. *Matthews v. Brise*, 6 Bea. 239.

## HUSBAND AND WIFE.

IN *Page v. Way*, 3 Beav. 20, trustees of a settlement were directed to pay and apply the rents of the property settled for the maintenance and support of the husband, his wife, and children. The husband became bankrupt, and his assignees claimed the whole income of the property. Lord Langdale, M. R., held that there could be no doubt of the intention of the settlement, that the wife should be supported out of the property, and referred it to the Master to approve of a proper allowance for the maintenance of her and her children. In *Hippos v. Norton*, 2 Beav. 63, where property was vested in trustees, in trust to apply the profits, during the life of the settlor's son, for the board and lodging of himself and his family, and the son took the benefit of the Insolvent Debtors' Act, his lordship also held that the children were entitled to three-fourths of the profits of the property. In a late case there was a settlement of a sum of money, with a direction to the trustees to pay the interest to Mr. and Mrs. D., for their joint lives, and to stand possessed of the principal for the survivor. Mr. D. afterwards separated from his wife, in consequence of her having committed adultery. Sir L. Shadwell, V. C., said, that "under these circumstances Mr. D. would be entitled to receive the whole. And if that be so, would it not be strange to say that he shall be deprived of the benefit which he is entitled to under this deed, because his wife has so misconducted herself that he is justified in being separated from her? I shall therefore declare that Mr. D. is entitled to the interest of the trust fund during the joint lives of himself and his wife; and as Mr. J. D. C. (one of the trustees) has taken upon himself to decide as to the rights of the parties under the deed, and has paid a part of the interest to Mrs. D., the order which I shall make with respect to the costs of the suit is, that Mr. C. do pay the plaintiff his costs." *Duncan v. Campbell*, 12 Sim. 616.

## SCOTCH DEED.

This case also involved the construction of a deed in the Scotch form, made between parties some of whom were domiciled in Scotland and others in England. As to this, his Honour said: "It is quite possible for an instrument to be of such a nature as that, with respect to one part of it, it is to be dealt with according to one species of law, and with respect to another part of it, according to a different species of law; and the instrument with respect to which the question in this suit has arisen, appears to me of that nature. There is very good reason why it should be considered to a certain extent as a Scotch instrument, and therefore it was proper that the instrument should be in the Scotch form, and that it should be registered in Scotland, in order to show that the real estate had been discharged. But in other respects, and as between Mr. and

Mrs. D. and Mr. J. D. C., all of whom were resident in England, there is no reason why the instrument should be considered as a Scotch one. As, then, the question in the cause arises between Mr. and Mrs. D., both of whom are domiciled in England, my opinion is, that the instrument ought to be construed as an English one." 12 Sim. 636.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

BY MR. CAYLEY SHADWELL.

## TRANSFER OF PROPERTY ACT.

7 &amp; 8 Vict. c. 76.

MR. SHADWELL commenced his course of lectures on the law of mortgages, so far as it relates to the practice of solicitors, on the 6th instant. From the first of these lectures, we are glad to select the following valuable commentary on the 9th and 10th sections of the Transfer of Property Act, 7 & 8 Vict. c. 76, which are intended to enable the personal representative of a deceased mortgagee in fee on the mortgage being paid off, to convey the estate which might have passed to his heir or devisee, and to give to trustees and the survivor of two or more mortgagees, power in all cases to give valid receipts for the money they receive.

The 9th section is as follows:—

"That when any person entitled to any freehold or copyhold land by way of mortgage, has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgagee, or the heir, devisee, or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power, upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender (as the case may require) the legal estate which became vested in such heir or devisee; and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs, or assigns."

This clause the lecturer had seen a good deal abused, and it had been said that it would not work. He confessed he did not think so. It was intended to remedy what was sometimes felt to be a considerable inconvenience, and if accepted by the courts in that spirit in which all remedial measures ought to be accepted, it would, he hoped, be found successful in getting over a difficulty which occasionally caused much embarrassment. It being a maxim of equity that where a mortgage was made, the mortgage debt was the principal, and the securities only the accessories, it followed that when a mortgagee died, the mortgage debt to which he was entitled, being, like all other



debts owing to him, part of his personal estate, vested in his personal representative, his executor, or administrator, while the legal estate of the mortgaged premises, if the mortgage were in fee, descended to his devisee, if he had made a will, or to his heir if he had made none, but always in trust for the personal representative. But the heir might be an infant, or a lunatic, or beyond sea, or a married woman, or, worse perhaps than all, a needy and unprincipled person, who would not do what equity and justice required unless he were paid his price. It was true that in many of these cases parliament had already stepped in, and enacted that by an application to the Court of Chancery, a proper conveyance might be obtained; but an application to the court was always both expensive and tedious, and in small properties particularly this must of itself be felt to be a very considerable grievance. The Transfer of Property Act, by enabling the executor or administrator, who was interested in the money to convey, seemed to have applied an effectual remedy, provided only that the clause was properly framed. The qualifications of the clause had been much objected to; that particularly which provided that possession of the land should not have been taken by virtue of the mortgage. But that qualification was absolutely necessary to prevent injustice, for where a mortgagee was in possession, he was or at any rate might be, by the cessation of payment of the interest in progress towards the time when he would become absolute beneficial owner; and in such a case as that, justice required that the executor of the last owner of the mortgage should not have the power of summarily interfering with the inchoate right of the heir. The same observation applied to the other qualification, which was, that this conveyance should not be attempted by the personal representative, if there be any action or suit depending. These qualifications, which were the parts of the section which had been the subject of the severest strictures, appeared to the lecturer in fact to be essentially necessary to prevent a clause which was generally desirable from working injustice in some particular cases.

The 10th section is as follows:—

“That the *bond fide* payment to, and the receipt of, any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.”

One of the practical difficulties which it was the object of this 10th section to remedy, was thus stated by Sir Edward Sudgen. V. & P. 10th edit. vol. 3, p. 151.

“Where a trust is raised by deed or will for sale of an estate, a clause that the receipts of the trustees shall be sufficient discharges is

mostly inserted and rarely ought to be omitted; because, notwithstanding that a purchaser would at law be safe in paying the money to the vendors, although trustees, yet equity will in some cases bind purchasers to see the money applied according to the trust, if they be not expressly relieved from that obligation by the author of the trust; and where the purchaser is bound to see to the application of the money, great inconvenience frequently ensues, and in some instances, it would be difficult to compel the purchaser to complete the contract.”

This receipt clause which Sir E. Sudgen thus advises always to be inserted wherever there was a trust for sale, it had hitherto undoubtedly been bad conveyancing to omit, and perhaps it would appear that to remedy the inconveniences arising merely from bad conveyancing, was an object of somewhat questionable policy, inasmuch as it might operate as a direct encouragement to careless practice.

To this criticism, however, there were more than one answer. In the first place, the inconvenience was one of very frequent occurrence, as the numerous cases on the subject to be found in the reports sufficiently testified. And these cases, the great majority of them arose upon wills, which, as was well known, testators, whether right or wrong, were not unfrequently in the habit of writing themselves, and it had been always the policy of the courts to assist in giving effect to the imperfectly expressed intentions of testators.

Another reason in favour of the alteration might be found in the tendency that it had to shorten the forms of deeds; an object of great importance in the eyes of some of our law reformers. To enable his hearers to judge how far it attained this object, the lecturer read an ordinary form of a receipt clause taken from a marriage settlement of land, observing at the same time, that he did not perceive any reason for doubting that this section did effectually supersede the necessity of introducing into deeds the clause enabling the trustees to give valid receipts, although from the doubt and suspicion that had been thrown over the whole act by the inaccuracies that had unfortunately been allowed to creep into some parts of it, it would probably be some considerable time before practitioners were persuaded to abandon their accustomed forms.

To get rid of this form, was certainly something in the cause of abbreviation, although, when compared with the length to which deeds of any importance ordinarily run, the improvement did not, perhaps, amount to much.

The best reason, however, for the alteration remained to be stated, and that was, that the requiring in any case a purchaser to see to the application of money arising by sale of estates conveyed or devised to trustees upon trust to sell, was in itself an unreasonable thing, and inconsistent with the character and the very name of a trustee, the essence of whose office and position would seem to be the confidence reposed in him by the author of the trust, that he would duly perform the duties imposed upon

him, and amongst others, that of rightly distributing the monies arising from the sale of an estate directed to be sold.

That courts of equity, however, would in some cases of sale by trustees, hold the purchasers from them liable to see to the proper application of the purchase monies, was clearly established, although it had been by several judges objected to as unreasonable.

Thus, in *Crowe v. Dicken*, 4 Ves. Jun. 99, it was stated at the bar in the course of the argument, that in a case at the Rolls, Lord Kenyon, when Master of the Rolls, inclined strongly to the opinion (although he made no decision) that trustees having the power to sell, they must have the power incident to the character, viz., the power to give a discharge.

Thus, also, in *Balfour v. Welland*, 16 Ves., Jun. 156, a case in which the question being, whether on the true construction of the instrument the trustees were or were not expressly given this power, &c., it was not necessary to decide the point, Sir William Grant observed, that he thought the doctrine upon this point had been carried further than any sound equitable principle would warrant. Where, he said, the act is a breach of duty in the trustee, it is very fit that those who deal with him should be affected by an act tending to defeat the trust of which they have notice; but where the sale is made by the trustee in performance of his duty, it seems extraordinary that he should not be able to do what one should think incidental to the right exercise of his power, that is, to give a valid discharge for the purchase money.

It was not, however, by any means in all cases, that in the absence of a proper receipt clause, the purchaser was required to see to the application of the purchase-money, and in order to enable the student properly to appreciate the extent of relief the statute has given, by establishing one uniform rule applicable to all cases, the lecturer mentioned a few of the distinctions that prevailed upon the subject.

First, it was a rule that if the trust were of such a nature that the purchaser might be reasonably expected to see to the application of the purchase-money, as if it were for the payment of legacies or of debts which were *scheduled or specified*, he was bound to see that the money was applied accordingly. *Culpepper v. Aston*, 2 Chanc. Cases, 221; *Spalding v. Shalmer*, 1 Vern. 301; *Dunch v. Kent*, 1 Vern. 260; *Abbott v. Gibbs*, 1 Equity Cas. Abrid. 358.

But where the trust was for the payment of debts generally, and not specified or scheduled debts, there the purchaser was *not* bound to see to the application of the purchase-money, even although he had notice of the debts; for it was considered, and justly considered, unreasonable to expect a purchaser to see to the due observance of a trust so unlimited and undefined.

The position just stated was laid down in the following cases:—*Hardwicke v. Mynd*, 1 Anstr. 109; *Williamson v. Curtis*, 3 Brown, C. C. 96; *Barker v. Duke of Devonshire*, 3 Merr. 310. The same rule prevailed also if the trust was

for the payment of debts generally, and also for the payment of legacies; for in this case, to hold that the purchaser was liable to see to the legacies being paid, would be in fact to hold that he must see to the payment of the general debts, for the debts must of course be paid before the legacies, as creditors come before legatees, who are mere volunteers.

There was one case apparently to the contrary of this, *Ormerod v. Hardman*, 5 Ves. Jr. 722, but it was a case of very little authority, and against which Lord Eldon in one case expressly warned the profession, saying, that he wished it to be understood that *Ormerod v. Hardman* could not be taken as a guide upon any question as to what could or could not be done by trustees or executors in the execution of the trusts of their testator's will. *Jenkins v. Hiles*, 6 Ves. Jr. 654.

By the 47 Geo. 3, c. 74, which was entitled "An act for more effectually securing the payment of the Debts of Traders," it was enacted, that when a trader within the meaning of the Bankrupt Laws should die possessed of landed property, it should be assets to be administered in a court of equity for the payment of his debts by simple contract, as well as those of a higher degree.

This act passed in 1807; and it might be observed, in passing, that it was almost the only measure of law reform which the late illustrious Sir Samuel Romilly was during his lifetime permitted to carry through, though only a small fragment of that larger measure of justice and common sense for which he had so strenuously contended during his lifetime, but which was not finally conceded till twenty-six years after his death, when, by the 3 & 4 Wm. 4, c. 104, entitled "An act to render Freehold and Copyhold Estates assets for the payment of simple contract debts," the remedy which had before been given only against the landed property of persons in trade, was extended also to the landed property of all persons whatsoever, whether in trade or not. On Sir Samuel Romilly's act a question arose, whether, where a trader had by his will charged his landed estates with the payment of legacies only, the general charge of debts upon the estates of traders made by the act, would bring the case within the rule, that where there is a charge of debts and also of legacies, a purchaser is not bound to see to the discharge either of the debts or of the legacies. It was decided, however, that the act would not have this effect. *Horn v. Horn*, 2 Sim. & Stuart, 448; *Woodgate v. Woodgate*, cited by Sir E. Sugden, from M. S. V. & P. 10th edit. vol. 3, p. 153.

If the 47 Geo. 3, c. 74, would not have this effect in the case of a trader, neither, by parity of reasoning, would the 3 & 4 Wm. 4, c. 104, have this effect in the case of people in general.

Another distinction upon which considerable doubt existed was, where, though there had been no specification of debts in the will, there had been a decree of the court that the estate

should be sold for the payment of debts. For in that case, it was said, the proceedings in the suit reduced the debts to as much certainty as if there had been a schedule of them in the will, and that the purchaser must see to their discharge. *Lloyd v. Baldwin*, 1 Ves. 173.

The general opinion, however, appeared to be, that in such a case the payment of the money into court was a sufficient protection to the purchaser. The court took upon itself the application of the money.

In many cases, however, a purchaser was not bound to see to the application of the purchase money, notwithstanding there was not a clause enabling trustees to give good discharges, and notwithstanding there was not a general charge of debts; as, for example, where the time of sale had arrived, and the persons entitled to the money were infants or unborn; for if in such a case the purchaser was so bound, he would be implicated in a trust which in some cases might be of long duration. *Sewarby v. Lacy*, 4 Madd. 142; *Breedon v. Breedon*, 1 Russ. & Mylne, 413; *Lavender v. Stenton*, 6 Madd. 46. Again, where, though the trusts were defined, the money was to be applied upon trusts which required time and discretion, as where the trust was to lay out the money in the purchase of estates. *Doran v. Wiltshire*, 3 Swanston, 699; Cases and Opinions of Eminent Counsel, vol. 2, p. 114.

For all past transactions these distinctions must still be attended to, and the statement of them showed that there were a very great number of niceties and difficulties surrounding, in many cases, the payment of money to trustees, which were not based on any clear and intelligible principles of general convenience, and which consequently it would be a great advantage to get rid of, as the lecturer thought for the future they had got rid of them by that part of the 10th section, which enacted that the *bona fide* payment to and the receipt of any trustee to whom money should be payable should effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof.

There being no doubt of the general convenience of the enactment, and it being of a remedial character, it might be hoped that it would receive a liberal construction, and not be subjected to any quibbling upon the words; for it must be admitted that it was in its structure somewhat open to verbal criticism. The words being, "the receipt of any person to whom any money shall be payable upon any express or implied trust or for any limited purpose," it might perhaps be asked, what is the meaning of the words "for any limited purpose?" coming as they do after the words "any express or implied trust," which seemed to include all kinds of trusts, and from which therefore the words "for any limited purpose" might appear to be intended to be contradistinguished.

The cases they had been considering furnished a sufficient, though perhaps not a

strictly grammatical answer to this question. For it was in these very cases of "a trust for a limited purpose," as, for example, a trust for the payment of legacies only, which was termed a limited purpose, and was opposed to a trust for a general purpose, such as a trust for payment of unspecified debts, that those difficulties arose which it was the particular object of the section to remove.

But it was not only to the case of trustees but also to some cases of mortgagees, that the section applied; and the difficulty with regard to mortgagees which the section was intended to obviate was this:—

A great part of the money lent upon mortgage in this country was trust money. But it being, as must be seen at once, productive of great inconvenience to mix up the parties borrowing the money (the mortgagors) with the trusts to which the money lent upon mortgage was liable, it was considered an important point of conveyancing policy to prevent the mortgagor from being affected with notice of the trusts. To bring about this object, the mortgage deed was, or ought to be, always framed as if it was their own money that the trustees were lending, nothing being said in the deed about the way they acquired the money or the trusts they held it upon. But trusts are usually vested in more persons than one, almost always two, very often more. Then what happened upon the death of one or more of the trustees mortgagees before the mortgage was paid off? On the face of the deeds the money appeared to belong to the trustees themselves, but on the death of one of two persons possessed, on their own account, of money secured on mortgage, though the money and securities would at law go wholly to the other by survivorships, in equity one-half of the money and securities would belong to the representatives of the deceased person, and accordingly, on the mortgage being paid off, the representatives of the deceased would, as entitled to half the money, be required to join with the survivor in giving the receipt for the money, and executing the deeds of re-conveyance. These would be the rights of the parties, and this the mode of proceeding, if the mortgage money was their own property; but if they held it upon trust, convenience had long established the rule, that upon the death of one trustee the whole trust vested in the survivor. In the case, then, of a mortgage made to persons who appeared on the face of the transaction to be beneficial owners of the money, but were in reality trustees of it, if one of them died, his interest, according to the apparent state of things, went to his representatives, according to the real state of things, went to the survivor. Accordingly, when the mortgagor came to pay off his mortgage, there was a choice of difficulties: either to keep up the concealment from the mortgagor of the fact that the money was trust money, and so require the executor or administrator of the deceased to join in the receipt and conveyance, and this, being a stranger, deriving no benefit

from the transaction, he was commonly very unwilling to do; or else to inform the mortgagor that the money was trust money, and by so doing undergo the necessity of explaining to him the nature of the trusts, and showing, or endeavouring to show, that the surviving trustee was competent to give a valid discharge for the trust money.

That was the difficulty; and it was one that not unfrequently occurred in practice, and sometimes delayed for a considerable time the completion of a transaction.

Modern conveyancing had endeavoured to meet the difficulty by introducing into mortgages, where the money advanced was trust money, a declaration that the receipt of the survivors or survivor of the mortgagees should be a valid discharge to the persons paying off the mortgage.

The lecturer then read a clause as to the receipts of surviving mortgagees, and observed that, as far as his own experience went, he did not think that this proviso was much made use of in the trust mortgage deeds of the last century.

It was at any rate incomplete; for it did not provide for the case of a transfer of the mortgage securities upon the appointment of a new trustee. For upon the deeds of transfer, when produced to the mortgagor, it would appear that in consideration of five shillings the retiring trustee assigned the mortgage money and the securities to a stranger. He had known the objection taken in practice, that this assignment of valuable securities for a nominal consideration led to such a grave suspicion of a trust, that the mortgagor, on the mortgage being paid off, was bound to inquire into it. The objection, he believed, was not encouraged by the most eminent practitioners; but at any rate it had never been set at rest by judicial decision. In this state of things, there were grounds for legislative interference; and it was an unquestionable improvement that the 10th section also enabled the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, effectually to discharge the person paying them any money on account of the mortgage from seeing to the application of it.

In this part of the section there was one very strange word which he could not attempt to explain. He could not say what was the meaning of the word "*holders*," which, in legal phraseology, he did not recollect to have ever met with before. It must be conjectured, however, to have some such meaning as the word to which we are accustomed, "*assigns*." Perhaps it was thought that assigns in law, creditors seising under a judgment, assignees in bankruptcy, and so on, were not to be designated by the same word as those to whom there had been made an assignment by deed; and it was these assigns in law that it was intended to designate by the word "*holders*." But this was all conjecture. It was sufficient for a commentator on this part of the

statute to shelter himself under the ancient maxim, which experience had shown to be applicable as well to statutes as to deeds: "*Bad grammar is no objection to an act of parliament.*" *Mala grammaticæ non vitiat chartam.*

## CONSTRUCTION OF THE METROPOLIS BUILDING ACT.

*To the Editor of the Legal Observer.*

Sir,—I have waited with some little anxiety for the appearance of any remarks which my communication, published in the *Legal Observer* of December 21st, might occasion; and I must own the disappointment I experienced when, after a careful perusal of the letters of A and H. S. F. in your number of the 4th instant, I could not discover the semblance of an argumentative reply; and although perfectly open, as I trust I shall always be, to a conviction of the unsoundness of any opinion I may have advanced, I am free to confess, I am of the same opinion still. Both of your correspondents studiously avoid entering into a critical examination of the words of the act, or the meaning (in a strictly legal sense) of the terms which are there employed, and content themselves for the most part with a display of the consequences which must ensue if I am correct. This I cannot designate legitimate argument.

Your correspondent A at once assumes, (but as it appears to me without foundation,) that because certain parishes are not specified by name, they are not, in consequence, omitted. This is the very gist of my argument, i. e., that because under the circumstances of the phraseology employed, the parishes referred to are not specified, they are, of necessity, omitted in the operation of the act. If assertion is argument, I claim priority in having first promulgated my own views. He says, "I might point out many parishes forming districts under the old as they will continue to do under the new act, (sec. 70,) which are not specified by name." If your correspondent will do so, the question will at once be settled; but the section (70) referred to, only continues in office the district surveyor appointed under 14 Geo. 3, c. 78, with this most extensive qualification, "*so far as relates to the application of this act to them, and for the districts assigned to them at the time this act shall come into operation, but subject to such alteration of such districts as may be made by any power in that behalf.*" How this determines that all districts, of which there existed a surveyor previous to the present act coming into operation, shall continue to be districts within its jurisdiction, I confess I cannot yet conceive.

He adds, "But the act pursues the plan of forming a circular line, &c.," and "declares that the operation of the act extends to all places within these boundary lines." This is

just what, in my former communication, I ventured to say that the act in question leaves *undone*, and in support of this opinion, I must refer to my former argument. It is the *not* pursuing a plan of forming a circular line, that occasions all the difficulty of which I complain; for had the act declared that its operation was to extend to all places north or south of the Thames bank, which were included within a boundary line, formed by the exterior boundary (with reference to the River Thames) of the several parishes of, &c., all doubt would have been at an end, and I should not have occupied so large a portion of your columns.

Your correspondent H. S. F. contends that the manifest intention of the legislature was to include all the parishes contended for; I only reply, that in a penal statute something more expressly defined is required in its enactments than mere evidence of intention; and as regards the title of the act and its preamble, they are only introductory, and must be sustained by the strict and legal meaning of the clauses which follow, to be of any avail. That every act which is substituted on the repeal of an old statute, is necessarily to be co-extensive in its operation with its abrogated predecessor, is a proposition I am not at present prepared to admit.

I have to apologise for the length of this communication: and, in conclusion, I only repeat what I considered the best test of the legitimate reading of the clause (3) upon which this discussion has arisen: "What terms could have been used which would have more effectually confined the operation of the act to such places as are within the boundaries of the respective parishes mentioned, than those which are to be found in the section referred to?"

H.

January, 1845.

## THE PROVINCIAL LAW SOCIETIES ASSOCIATION.

AT a meeting of deputations from Provincial Law Societies held at the Law Society's Rooms, No. 4, Norfolk Street, Manchester, January 10, 1845.

### Present.

R. H. Wilson, Esq., in the chair.

*Birmingham*.—Mr. Thomas Eyre Lee; Mr. Arthur Ryland.

*York*.—Mr. George Hicks Seymour; Mr. Thomas Hodgson.

*Leeds*.—Mr. John Hope Shaw; Mr. Richard Ecroyd Payne; Mr. John Sangster.

*Hull*.—Mr. Charles Frost; Mr. C. H. Phillips.

*Huddersfield*, (*West Riding Society*).—Mr. John Freeman.

*Witney, Oxfordshire*.—Mr. James Westell.

*Oxford*.—Mr. John Marriott Davenport.

*Liverpool*.—Mr. Thomas Avison; Mr. Ambrose Lace; Mr. J. Eden.

*Feversham, Kent*.—Mr. Julius J. Shepherd.

*Dover*.—Mr. Edward Knocker.

*Lancaster*.—Mr. John Sharp; Mr. J. H. Sherson.

*Alford, Lincolnshire*.—Mr. J. Bourne.

*Lincoln*.—Mr. E. A. Bromehead.

*Long Ashton, Somersetshire*.—Mr. Henry Abbott; Mr. R. H. Wilson.

*Manchester*.—Mr. J. Grave; Mr. R. M. Whitlow; Mr. Steven Heelis; Mr. James Crossley; Mr. Charles Gibson; Mr. Thomas Taylor, Hon. Sec.

The following resolutions were unanimously passed:—

That it is desirable for the interests of the public and the legal profession, that an association of provincial law societies be formed to assist in obtaining all useful and practical amendments of the law—to watch all legislative and other measures affecting the profession, and to adopt measures for maintaining its respectability.

That such association be and is hereby formed, and shall consist of all such societies as shall now signify their intention of joining, and of all such other existing societies as shall hereafter signify such intention to the honorary secretary of the association, and of all such other societies hereafter to be formed as shall be admitted according to the rules of the association, the name of which shall be "The Provincial Law Societies Association."

That there shall be a president, two vice-presidents, a treasurer, and an honorary secretary of the association, to be elected annually.

That Mr. George Hicks Seymour of York be the president, Mr. J. M. Davenport of Oxford, and Mr. Steven Heelis of Manchester the vice-presidents, and Mr. R. M. Whitlow of Manchester the treasurer of the association, until the first annual general meeting.

That Mr. Thomas Taylor of Manchester be requested to undertake the office of honorary secretary to the association, until such annual general meeting.

That the above-named officers, together with the president, vice-presidents, treasurer, and secretary of each society belonging to the association, and the following gentlemen, be the committee of management until the first annual meeting:—

Mr. John Bagshaw, Manchester,

Mr. James Barratt, jun., do.

Mr. Charles Cooper, do.

Mr. James Crossley, do.

Mr. Edwin Eddison, Leeds,

Mr. Charles Gibson, Manchester,

Mr. Joseph Grave, do.

Mr. Joseph Heron, (Town Clerk,) do.

Mr. Ambrose Lace, Liverpool,

Mr. C. H. Phillips, Hull,

Mr. John Sharp, Lancaster,

Mr. Julius J. Shepherd, Feversham,

Mr. George Thorley, Manchester,

Mr. James Westell, Witney, Oxfordshire.

Mr. R. H. Wilson, Manchester.

That the committee shall have power to fix

the time of the general meeting, to make by-laws and adopt all such proceedings in the name of the society as they may think proper, and generally be invested with full power to do all such acts as they may think necessary, for practically and effectually carrying out the objects of the association, being indemnified by the same against all expenses to be thereby incurred, and shall have full control over the funds for the purposes of the association, and shall meet on the first Friday in every month, at one o'clock P. M., and whenever they consider it necessary for the interests of the association, or at the call of the secretary, but notice of the objects of such meeting shall be given by the secretary, three to form a quorum.

That the subscription from each society forming the association, having less than twenty members, shall be five guineas per annum—twenty, and under thirty, seven guineas—thirty, and under fifty, ten guineas—fifty, and under one hundred, fifteen guineas—one hundred and upwards, twenty guineas.

That the committee shall forthwith prepare such rules for the general government of the association as they may consider necessary, in accordance with the proceedings of this meeting.

That the best thanks of this meeting be given to Mr. Taylor, the honorary secretary, for his zealous exertions in forming the association.

That the best thanks of this meeting be given to Mr. Thomas Hodgson of York, for his important services in the formation of this association.

(Signed) R. H. WILSON, *Chairman*.

That the best thanks of this meeting be given to R. H. Wilson, Esq., for his able conduct in the chair.

THOMAS TAYLOR, *Hon. Sec.*

N. B.—All communications must be made to the honorary secretary.

## NOTICES OF NEW BOOKS.

*The Joint Stock Companies Registration Act. An Act, (7 & 8 Vict. c. 110,) for the Registration, Incorporation, and Regulation of Joint Stock Companies; with Preface and Index.* By JAMES BURCHELL, Esq. And an *Analysis*, by CHARLES RANN KENNEDY, Esq. London: Henry Butterworth, Fleet Street. 1844. Pp. 96.

THIS edition of the Joint Stock Companies Act is preceded by a useful Analysis of its various enactments. The act was printed verbatim in our last volume, p. 368, and we have given a series of articles containing explanatory remarks on its operation and effect in the present volume (see pp. 15, 57, 98, 163.) Our

readers will recollect that the companies existing when the act came into operation, and which are within the scope of its provisions, must be registered before the 1st February. We extract the following from the analysis of this part of the act:—

“The act applies to every partnership whose capital is divided or is agreed to be divided into shares, and so as to be transferrable without the express consent of all the copartners; and to all companies for assurance against fire, sea-risk, and for insurance on lives, except friendly societies, unless they make assurances to an extent on one life or for any one person to an amount exceeding 200*l.*; and to every partnership which at its formation, or by subsequent admission (except on devolution or other act of law) shall consist of more than twenty-five members. (sect. 2.)

“The act applies, however, only to partnerships, the formation of which shall be commenced after the 1st November, 1844, except where the provisions of the act are expressly applied to partnerships existing before that day. (s. 2.)

“There is a provision, also, excepting companies for executing parliamentary works, such as bridges, roads, &c., which cannot be carried into execution without the authority of parliament. (s. 2.)

“And there is another provision excepting any company incorporated by statute or charter, and any company authorized by statute or letters patent to sue, &c. in the name of some officer or person. (s. 2.)

“Notwithstanding, however, these general exceptions, all these companies are brought within some of the provisions of the act; and some companies, although partially excepted, may by subsequent proceedings of those companies be brought further within its operation. (s. 2.)

“The act does not apply to Scotland, unless the company is established there and has an office in any other part of the United Kingdom. (s. 2.)

“Nor to any company unless established for some purpose, commercial, or of profit, or for assurance, or insurance. (sect. 2.)

“The following institutions are not at all within the operation of the act; viz., Banking Companies, Schools, and Scientific and Literary Institutions, Friendly, Loan and Benefit Building Societies, duly enrolled, &c. (with a provision touching friendly societies, which, as before stated, are in certain cases within the act. (s. 2.)

“Partnerships formed for the working of mines, minerals, and quarries, of what nature soever, on the principle commonly called the Cost-Book principle. (s. 63.)

“Irish anonymous partnerships.” (s. 64.)

The preface and an excellent index to the act are the composition of Mr. Burchell, who thus states the occasion of his share of the labour:—

"The circumstance of my being a director of the Mutual Life Assurance Society induced me to look with some attention into the Joint Stock Company Regulation Act, and finding that I might be subjected to penalties for omitting to do certain things required by the act, I have taken some pains to discover my exact position. I found it, if not necessary, highly convenient to make an index; and as that employment is not very amusing, I have thought that some of my professional brethren would not be sorry to avail themselves of my labours. I have also endeavoured to state very concisely the position of the existing companies generally: I have endeavoured to distinguish that of companies for executing parliamentary works, bridges, roads, &c., from that of assurance companies; and I have also made a short summary of the duties of promoters of any joint stock company within the operation of the act; and as the penalties attached to those who promote a company without attending to the regulations required by the act are very serious, I advise every one, before he enters upon that duty, to read and well consider the clauses of this act relating to that office.

"I have also pointed out the liabilities of shareholders. It is obvious that the act has been somewhat hastily concocted; the references of the schedules to the clauses, and *vice versa*, are in several cases inaccurate. I have corrected some, if not all of them, in the index.

"The objects of the act are undeniably excellent, and the public are much indebted to those high in office, who have passed an act calculated to enable honest persons safely to enter into engagements with a view to fair profit and benefit either to themselves or families, and to prevent the dishonest from extracting the loose cash from the pockets of their unsuspecting neighbours."

#### EXAMINERS FOR 1845.

11 January, 1845.

WHEREAS, by an order made by the Right Hon. the Master of the Rolls, on the 13th of January, 1844, it was (amongst other things) ordered, that every person who had not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be

admitted to take the oath required by the statute 6 & 7 Vic. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching his fitness and capacity to act as a solicitor of the said Court of Chancery; and that twelve solicitors of the same court, to be appointed by the Master of the Rolls in each year, be examiners, for the purpose of examining and inquiring touching the fitness and capacity of every such applicant for admission as a solicitor; and that any five of the said examiners should be competent to conduct the examination of such applicant. Now, in furtherance of the said order, the Right Hon. the Master of the Rolls is hereby pleased to order and appoint that Samuel Amory, Benjamin Austen, Michael Clayton, William Loxham Farrer, Richard Harrison, Bryan Holme, Robert Wheatley Lumley, Edward Rowland Pickering, Charles Ranken, Charles Shadwell, William Tooke, and Edward Archer Wilde, solicitors, be examiners until the 31st day of December, 1845, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them,) who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said court. And the Master of the Rolls doth direct that the same examiners shall conduct the examination of every such applicant as aforesaid, and to the extent pointed out by the said order of the 13th day of January, 1844, and the regulations approved by his lordship in reference thereto, and in no other manner and to no further extent.

LANGDALE, M. R.

#### HILARY TERM EXAMINATION.

THE number of persons for examination this term is considerably smaller than the last. Although the list of admission notices extends to 144, this number includes 41 who have been already examined and passed, leaving 103; but there are 6 to be added, who have given notices of examination and not of admission. Allowing for cases of defective testimonials, and the usual proportion of absentees, the number will probably be less than 100.

#### ATTORNEYS TO BE ADMITTED.

*On the last day of Hilary Term, 1845, pursuant to Judges' orders.*

*Queen's Bench.*

*Clerks' Names and Residence.*

*To whom Articled, Assigned, &c.*

Barnett, Richard Humphreys, 25, Chester

Charles J. Palmer, Bedford Row.

Terrace, Regent's Park

Davis, Henry Fox, Bath; Craven Street;

Simon George Little, Bristol.

Cecil Street; and Manchester Buildings

John George Smith, Crediton.

Frere, Edward Daniel, 5, Newman's Row

George Cameron, Lincoln's Inn Field's.

Partridge, William, 29, Lincoln's Inn Fields

James Partridge, Tiverton.

Serjeant, William Pye, 49, Jewin Street, Aldersgate Street; Plymouth; and Baker

Charles Coble Whiteford, Plymouth.

Street, Lloyd Square

Watson, Charles, 36, Upper Gower Street

George Augustus Crowder, Mansion House Place.

# RENEWAL OF ATTORNEYS' CERTIFICATES.

On the last day of Hilary Term, 1845.

## Queen's Bench.

1. Burder, Henry Hardcastle, Church St., Hackney; New South Wales; on the seas; and Maida Hill.
2. Birch, Edward, Rochester.
3. Fisher, Charles, Newport, Isle of Wight.
4. Fothergill, Mark, Thorne; Selby; and Kpottlingley.
5. Foggo, Francis Alexander, Bexley Place, Greenwich.
6. Fell, Charles Richard, Bishopwearmouth.
7. Hall, Horatio William, 23, Rupert Street, Haymarket.
8. Howard, Thomas Compson, 53, Edward Street, Regent's Park; Hereford.
9. Lidiard, William Bye, the younger, Bath.
10. Monkman, Henry William, York; Fog-gathorpe.
11. Martell, Etwall Hebard, 33, Trafalgar Grove, Greenwich: Shooter's Hill Road.
12. Marshall, John Hough, 21, Brownlow Street; Kirby Street; Wilson Street; Holywell Place; and Bouverie Street.
13. Nash, George, Great Sutton St., Cleken-well.
14. Oxley, George, Sheffield and Rotherham.
15. Perkins, Thomas, Warwick.
16. Parker, Thomas Lane, Birchfields, Staf-fordshire.
17. Postlethwaithe, John, the younger, 103, Great Russell Street, Bloomsbury; UL-verston; New South Wales.
18. Parker, William, 5, Caledonian Cottages, Bridge Road, Battersea; 144, High Holborn; North Bank, Regent's Park.
19. Plumbe, James Stuart, Kirkdale.
20. Robinson, Philip Vyvyan, formerly Philip Vivian, Nansloe near Helston; Kedruth.
21. Rowsell, Thomas Spooner, 4, Kinder Street, Old Kent Road.
22. Shillibeer, Henry Webb, the younger, Taunton; Queen's Prison.
23. Tench, James, Dudley; Hanbury; Scropton; Claverley; Over Arcley; Kidderminster; Birmingham.
24. Teulon, Peter Ross, 22, Queen's Street, Golden Square.
25. Walker, John, Middlesborough, York-shire.
26. Whytehead, John, Kirbymoorside.
27. Wilme, Thomas, 7, Northampton Row, Clerkenwell; Cross Street, Hatton Garden.
28. Waldron, Alfred, Brentwood.
29. Welch, Charles Hewett, Ashbourne.

## Added to the List pursuant to Judges' Orders.

30. Andrews, Thomas, Springfield Cottage, Simpson Street, Wandsworth Road; 15, Hanscomb Place, Clapham; and 15, Ward Street, Lambeth.
31. Freame, Henry George, 23, Elliott's Row, Newington; Paris Street, Lam-beth.

32. Parsons, Frederick John, Newbury.
33. Pycroft, James Wallis, 7, Buckingham Street, Strand; and College Street, Westminster.

## PRIVILEGE FROM ARREST. — ROYAL PALACES & THEIR PRECINCTS.

MR. EDITOR,—As I am led to believe that the doctrine of "privileged persons" and "privileged places" is not generally known to the profession, I have considered that the communication of a case involving these points, and of very recent occurrence, will not be uninteresting.

Having obtained a verdict for a considerable sum, the debtor took up his abode in one of the houses tenanted by the Poor Knights of Windsor, and which is situated within the castle gates,—a step which he adopted avowedly for the purpose of obtaining protection from arrest. A writ of *ca. sa.* having been issued, the sheriff of Berks refused the execution of the warrant at any place within the royal palace or its precincts. The debtor holding no office in the royal household, and his caption involving no loss of service as regarded royalty, I felt persuaded that, whatever might be the prerogative of the Crown as regarded the protection it gave to its servants, and however important it might be that such prerogative should be preserved inviolable, a principle I could not for a moment contravene, yet that a proper representation of the circumstances to those exercising authority would obtain for me a permission to execute that process of law, which her Majesty, as the head of legislation, was bound to uphold. I am happy to say that I had not misapprehended the course to be adopted, or the determination on the part of her Majesty's officers to withhold all protection from the fraudulent debtor. Upon application to the Lord Steward, as chief officer of the Board of Green Cloth, I received, through his secretary, Sir Thomas Marrables, a reply in the following terms:—

"A. v. B.

"Board of Green Cloth, St. James's Palace,  
"5 Dec. 1844.

"SIR,—I have received the Lord Steward's directions to acquaint you that he will not interpose or object to the execution of any process which may be necessary with respect to the contents of the letter which you addressed to his lordship on the 3rd inst., but that the execution must be conducted with due decorum.

"I have the honour to be,

"Sir,

"Your most obedt. Servant,

"THOMAS MARRABLES."

I must not omit to state how readily and politely every inquiry was answered, and facility afforded by Sir Thomas Marrables to



further the object I had in view, and especially that he stated it was the desire of the Lord Steward that the public mind should be disabused of an incorrect notion entertained; and that it was the uniform practice of the Board to compel those who were in actual service in the household to make adequate arrangements for paying just debts, in order that the privilege they personally were entitled to, should not be improperly subverted to shield them in dishonesty. Much less would any such protection be extended to a stranger.

In consequence of this permission, the caption was effected in one of the residences of the Poor Knights at Windsor, and the debtor carried, much to his surprise, to Reading jail.

Very soon afterwards a summons was taken out to show cause "why the defendant in the action should not be discharged out of custody, he having been taken in execution within one of the royal palaces of our sovereign lady the Queen, called Windsor Castle, and that he was so taken without any sufficient authority for that purpose."

This summons was supported by affidavits, proving the place of caption to be within the palace, (a point not disputed,) and also averring that the government of the castle was in the Governor of the Round Tower, the castle being a fortress as well as a palace. At the hearing before Baron Rolfe at Chambers, the case was fully argued by counsel on behalf of both parties. The arguments in favour of the discharge were that any such arrest within the royal palaces was *de facto* void, and that no officer of the crown had authority to give such a permission as contravened the provisions of a statute. The question of its being a fortress was abandoned, the judge remarking that Portsmouth would then be exempt; and in addition, there being no protection whatever for a fortress, as such, the only word used in Coke being "*palatium*." In support of the caption it was urged that this was a question of royal prerogative, existing solely between the Crown and the subject, and that the only injury contemplated was personal indignity to the sovereign, and that if it were not so, the permission of the Board of Green Cloth was amply sufficient.

The authorities referred to and relied on were 32 Hen. 8, c. 22, Coke's Instit. 3, 140. *The King v. Stubbs*, 3 T. R. 740, (where the case of Fitzpatrick and Kelly is referred to). *Sparks v. Spinks*, 7 Taunt. 311; *Piggott v. Wilks*, 3 B. & A. 502; *Winter v. Miles*, 10 East and 1 Campb. *nisi prius*.

The judgment of the Baron was delivered a few days after the argument, *dismissing the summons with costs*.

In the course of my inquiries I ascertained that it had been a common practice with many debtors to obtain, as they conceived, a sanctuary under the wing of royalty. The above decision will, I have no doubt, awaken them.

H.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

### BEQUEST OF PORTRAITS.—PICTURE OR PORTRAIT.

*A testator bequeathed his portraits of several ancestors (of each of whom he had only one), and of the Duke of Schomberg, of whom he had three likenesses, one being a large painting representing the Duke on horseback, in a field-marshal's dress, and troops in the back ground; the second, a half-length in oil; and the third in crayons. The will contained another bequest of pictures, cameos, &c.*

*Held, that the large equestrian painting of the duke was a portrait, and passed with the two other likenesses under the bequest of portraits.*

THIS was an appeal from a decision of the Vice-Chancellor of England; and the question was, whether a painting (by Sir Godfrey Kneller) of the Duke of Schomberg, in a French marshal's uniform, on horseback, with a show of troops in the back-ground, passed under a bequest of "portraits of the Duke of Schomberg."

The late Duke of Leeds by his will bequeathed the *portraits* of himself and of his grandfather and grandmother, (the Earl and Countess of Holderness,) and of his mother, and of the Duke of Schomberg, &c. to Earl Amherst, and other persons named in the will, upon trust to hold the same exempt from his debts, and other charges, for the use of his son-in-law, Sackville William Lane Fox, during his life; and after his decease, upon the same trusts, and subject to the same provisos as were thereinbefore expressed concerning the plate, &c., to the intent that they might be annexed as heir-looms to, and go with, certain manors and hereditaments thereinbefore settled to the use of and in trust for the said S. W. Lane Fox. And as to his (the testator's) *pictures*, prints, cameos, intaglios, &c., and household goods and furniture at Hornby Castle, *except the articles already bequeathed*, he bequeathed the same to the same trustees, upon trust to sell, &c.; and by a codicil to the will he directed that his son, the present Duke, might be at liberty to purchase them at 20 per cent. under the valuation price to be put on them by the trustees and executors.

At the date of the will, and at the testator's death, there were three pictures or portraits of the Duke of Schomberg at Hornby Castle: first, a grand equestrian portrait, as before mentioned; second, a half-length portrait in oil; and third, a portrait in crayons: and the Master, upon a reference to him by the original decree in the cause, reported that he was of

opinion that these three pictures or portraits were included in the bequest of portraits to the use of S. W. Lane Fox and his family.

The Duke of Leeds, the plaintiff, took exceptions to that part of the report : first, that the equestrian picture was not a portrait of the Duke of Schomberg ; and, secondly, that if it was a portrait, it was not included in the said bequest, but was included among the pictures and ornamental furniture of Hornby Castle, directed to be sold, with right of pre-emption, to the plaintiff. The Vice-Chancellor, before whom the exceptions came to be argued, held that the equestrian picture was a portrait, and passed under the bequest of portraits of the Duke of Schomberg.

Mr. Bethell and Mr. Lloyd were for the appellant.

Mr. Stuart and Mr. G. L. Russell supported the Vice-Chancellor's decision.

The arguments on both sides, especially for the appellant, were most learned, critical, and ingenious, upon the nice distinctions between portraits and other representations ; and they occupied nearly three days.

The Lord Chancellor, in giving his judgment, stated the bequests in the will, and the form in which the question was brought before the court below, and then here, and his lordship then proceeded to the following effect : The picture in dispute was the large equestrian portrait placed at one end of the hall in Hornby Castle. An equestrian picture of the Marquis of Montrose occupied the corresponding panel in the other end of the hall, and the intermediate spaces were occupied by portraits of distinguished historical characters. There was some doubt whether the half-length portrait represented the Duke of Schomberg ; but for the purposes of the argument and the inquiry, it must be taken as one of the portraits of the duke. It had been so found by the Master, and no exception was on that ground taken to the report. It was not his lordship's intention to enter at any length into what may be, with some propriety, called the ornamental part of the subject, or to follow the Vice-Chancellor and the learned counsel through all those etymological disquisitions which had been raised in solution of the question of the picture being a portrait.

The Vice-Chancellor, in his judgment, said, properly, that the sole question at issue was, whether the picture could in strictness, and according to the ordinary acceptance of the word, be called a portrait. That was the question, therefore, to be again considered. I have not seen the picture itself, but I have had placed before me a very elegant and apparently accurate copy of it in *mezzotinto*, from the hands of Mr. Smith. In the picture the Duke is represented on horseback, and an attendant is holding his helmet, the back-ground being occupied by troops drawn up in order of battle. The countenance of the figure is turned towards the spectator, as is usual in a likeness of that description. The first thing that strikes one is, the fact of the face being so turned, in

order that the painter might give a complete likeness. The face appears to be full of expression and character, and had all the distinguishing characteristics of a fine portrait. No man indeed who looks at it can entertain a moment's doubt that it is a good, a striking likeness of the duke. If any doubt could be raised on the question, I would ask the person who entertained it to look at the picture in its details. When an artist sits down to paint a portrait, he considers what are the prominent characteristics of the man, what his profession, what the actions by which he has obtained distinction. If the person to be painted is a judge, the artist introduces him in his robes of office ; if a bishop, in his lawn sleeves ; if a military or a naval commander, in his proper uniform. He attends to these things as preserving the unity of the character, and as showing the profession of the person to be represented, and his position in society.

Now I beg attention to the period in which the Duke of Schomberg flourished. He was born in the commencement of the seventeenth century ; became a marshal of France about the middle of it ; and he was killed towards its close, in the year 1690, at the battle of the Boyne. Armour was the dress of a military man of the period ; it was the custom to wear it, and the Duke was therefore represented by the painter in armour and in character. There was nothing in that part of the picture to detract from the common opinion that it was a portrait of the Duke ; and it was a remarkable fact, that in the two engravings handed up, one by Houbraken and the other by Vander-gootch, the Duke was also represented in armour. It has indeed been observed, that in the half-length, which the Duke of Leeds now contends is a portrait of the Duke of Schomberg, there is no armour on the thighs and legs, and therefore it is inferred by Mr. Bethell (his counsel) that it might be doubtful whether the equestrian picture, in consequence of that and some other circumstances, is a portrait of the Duke. It ought, however, to be recollected, that the half-length is a standing figure, and armour was not in that case worn in the 17th century. It was only when on horseback that the thighs and legs were covered, and then, as appeared in the picture, they were so cased to complete the equipment. The objection therefore so taken merely adds to and establishes the individuality. If a judge was to be painted, the artist would represent him in his study or on the bench : the field-marshal and warrior was most properly placed on horseback and in armour, appropriate to his character, appropriate to his position. I take for example a similar portrait, that of Charles the First, painted by Vandyke. What would any one call that but a portrait, and a portrait, too, very much resembling the one now the subject of contention ? In that, Charles is represented in armour, on horseback, with the head uncovered, and the Duke de Nivernois in attendance as a page. What, in ordinary language,

is that picture but a portrait? But then it was said that one would not call it a portrait without an addition: that we must say an equestrian portrait. Why, so one must, if one is to be very particular. If the well-known picture of Dr. Johnson, by Sir Joshua Reynolds, was to be mentioned with that degree of particularity, instead of saying it was a portrait, it might be said it was a bust. If we descend to so much particularity, every picture must be described according to its degree. The introduction of hands made a portrait a kit-kat: then there is the half-length, and the three-quarters. If one wishes to be very accurate, these additions might be made to the description, but still the picture is not the less a portrait.

Then it was said that this picture represented a battle. Undoubtedly there are some troops in the perspective, drawn up or marching; but this circumstance cannot be passed over, that the largest of the divisions of troops so introduced does not exceed in size one of the hoofs of the horse on which the Duke is seated. The figures are wholly subordinate to the portrait; and is it not more rational to suppose that they were introduced by the artist as characteristic of the achievements of his figure, and intended to be mere accessories through which the spectator was to be informed of the rank and exploits of the person represented on the canvass. The illustration of this view of the subject is new and striking: we can find a hundred instances of it, but a very few suffice. Take the picture of General Amherst, by Sir Joshua Reynolds: the general is represented on horseback, in the uniform of the period in which he flourished; troops in the back ground; all the appearance of a battle; all the circumstances that occur in the picture of the Duke of Schomberg; and yet who ever heard of that picture being called anything but a portrait? Take again the picture of Lord Ligonier, in the National Gallery: he is represented there in that action where, with a handful of his brave companions in arms, he sacrificed himself to rescue the Duke of Cumberland from a dangerous position into which he had unfortunately fallen in the course of the campaign. Surely no one could look at that picture and say it was anything but a portrait, although the accessories in the back ground tell the tale of his merits and his services almost as plainly and forcibly as if his name was written on the face of the canvass. Then there is the portrait of the Duke of Wellington on horseback, by Sir Thomas Lawrence, now in the collection of Sir Robert Peel: the Duke is represented at the Battle of Waterloo, with a telescope in his hand, and the battle in perspective; but who ever called the picture by any other name than the "portrait of the Duke at the Battle of Waterloo?" certainly the picture does not represent the battle. Again, there is the picture of "Phillip the Second at the Battle of St. Quintin," on horseback, under the same circumstances, and the portrait of the Duke d'Angoulême, in the

Waterloo Gallery. In that picture the Duke is represented at the Siege of Cadiz,—rather a singular thing, considering the place for which the picture was intended; but the subject was introduced by the artist because the capture of the place was thought to confer a distinction, and mark the individuality of the character. And with respect, too, to the portrait called "The half-length of the Duke of Schomberg," introduced in the course of the discussion, there the artist had a back ground, the siege of Bellgrade, and troops moving either to the attack or to take possession of the fortress. That picture was open to the very same observation that the equestrian picture is. I need not go further, although I could refer to a hundred other instances of subjects made subordinate to the introduction of the individual to be represented. In the fine historical picture of "The Death of General Wolfe," by West, several figures are introduced—they are all portraits; but that does not affect the position; they are accessories to the main design of the painter—a representation of the death of Wolfe, and pointing out some events connected with the subject to be depicted.

But then it is said that the picture is a mere ideal creation of the painter, the fruit of his imagination, and that it cannot therefore be called a portrait, but is a picture of the Battle of the Boyne. Now the Duke was killed there; and if a picture of the Duke at that battle, it must have been painted after his death, and therefore it was said the painting must be ideal. True, it might be so; but then if the materials for a picture were in existence before the death, from which a likeness could be painted, the picture would not be less a portrait; not so accurate perhaps as if painted from the life, but still a portrait: witness the picture of the late Mr. Perceval, to a considerable extent a good and striking likeness. But there is no evidence, either in the court or before the Master, that this picture did represent the Battle of the Boyne; and in my opinion the foundation raised upon that hypothesis wholly fails. Looking at the picture, one could not bring the mind to consider it a posthumous one. The countenance is full of fire and character; it fills all our conceptions of what the Duke of Schomberg must have been, and bears marks of being one of the finest that Sir Godfrey Kneller ever painted. From all this, I come to the conclusion that the back ground never was intended to represent the Battle of the Boyne. There is, however, evidence, not strictly before the court, but still almost conclusive evidence, that the picture does not represent the Battle of the Boyne; for it appears from the two engravings of it produced in court that they were executed in 1689, the year before the battle: so it appears from Bromley's catalogue. I cannot, therefore, believe that the picture is ideal.

Passages have been read from Fuseli and the eloquent work of Sir Joshua Reynolds, to show that this is not a portrait. What, however is the scope and meaning of these writers?

Their object was not to show what was or was not a portrait, mechanically and technically speaking, but how a portrait, a good portrait, ought to be painted, and how everything must be rendered subordinate to the main design of the artist, and that if anything was to be introduced, it must be in harmony with the character, and for the sole purpose of exhibiting to advantage the countenance of the person to be represented. These are the rules of the art which they sought to explain and enforce. Suppose, for instance, a person was to be painted in the rich robes of a Knight of the Garter: a judicious artist, in spite of the richness of the dress, would so dispose of those robes as to make them altogether subordinate to the countenance of the figure, which must be, of course, the principal object of his attention. On the contrary, a clumsy artist would so manage that dress as to make it the principal object on which the eye would rest, and cause it to be the main object of attraction. The picture in both instances would be a portrait, bad in the latter, but still a portrait. The whole argument founded on the works of these writers proceeded on a misapprehension of their intentions.

A word or two as to the evidence: it had been shown by the evidence of Mr. Raymond that the picture was always called a portrait, and that the late Duke of Leeds had himself so called it. I give full assent to the principle, that where one thing answers fully the description, and that the other does not, then not more than one passes. I do not, however, think that anything has come out to require me to try the question by that test, nor is there any assistance to be derived from the other parts of the will. Satisfied, then, that the picture is strictly and properly a portrait, and that the evidence of the testator's intention is mere conjecture, met by corresponding conjecture, on the other side, I have no alternative but to affirm the order of the Vice-Chancellor, and dismiss the appeal, with costs.

His lordship added, that he had gone fully into the question, because he apprehended, from the spirit displayed by the parties, that they would carry the matter to the House of Lords, and he wished it to go there with his views on the subject, so stated as to leave the parties no ground for misapprehension of them.

*Duke of Leeds v. Earl Amherst and others*,  
Nov. 25, 1844.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

#### EXCEPTIONS TO REPORT. — PRESUMPTION OF DEATH.

*Although it has been determined that the death of a party is to be presumed, if he have not been heard of for seven years, yet the evidence must be so clear that no question can be raised as to his being alive.*

*If the Master be directed to find whether a party who is presumed to be dead, died unmarried and without issue, it is not sufficient for him to state that the evidence laid before him does not enable him to state whether the party died unmarried and without issue.*

THIS cause came on upon exceptions to the Master's report. By the decree dated the 1st of August 1843, a reference was ordered to the Master to inquire whether Mary Bilton in the pleadings named was living or dead, and if dead when she died, and who was her personal representative, and whether she left any and what children her surviving, and whether such issue was living or dead, and if dead when they died, and who were their legal personal representatives.

From the evidence adduced, it appeared that Mary Bilton left her parents' house at Cottenham unknown to them, during the year 1809 or 1810, she being then about 16 or 17 years of age, at which time she was unmarried, and that nothing was heard of her again until 1814, when a letter was received from her at Portsmouth, addressed to her sister, informing her that she was then going to see a naval sham fight, intended for the amusement of the allied sovereigns, then in England, and that she intended afterwards to go abroad. It appeared also by one of the affidavits brought into the Master's office, that the father of Mary Bilton had stated that he received intelligence about four or five years ago, that she was dead, but it did not state from whom the intelligence was received, nor at what time the death took place.

On the 21st of December 1843, the Master made his report, and thereby, after stating the evidence laid before him, found that nothing had been heard of the said Mary Bilton since 1814, and he therefore found that she was dead, but he also found that no sufficient evidence had been laid before him to show when she died, or whether she died without issue or unmarried. To this report two exceptions were taken, the first of which was, that the Master ought to have found that Mary Bilton was dead, and that she died some time previously to the end of the year 1821; and the second, that the Master ought to have found that she died unmarried and without issue.

*Wakefield and Cankrien* in support of the exceptions, said, the law was now settled that a party would be presumed to be dead if not heard of for seven years. The object of the inquiry before the Master was, to show that the party in question was not alive in 1821, and there was abundance of evidence to warrant the Master in fixing the time of the death prior to that period. *Doe d. Bunning v. Griffin*, 15 East, 293; *Doe d. Oldnall v. Deaken*, 2 Man. & Ry. 195; *Webster v. Birchmore*, 13 Ves. 362. With regard to the second exception, there could be no doubt that as the Master had found the death, he was bound to certify whether the party died unmarried and without issue.

*Bethell and Hubback*, contra, said the rule

was, that death was to be presumed at the end of seven years from the time when a party was last heard of, and the party in this case having been heard of in 1814, death could not be presumed to have taken place until 1821. It appeared, also, that intelligence was received by the father of the death about four or five years ago, and if any inference were to be drawn from the statement, it would be against the presumption that the death had occurred so early as 1821. *Dixon v. Dixon*, 3 Bro. C. C. 509. [The Vice-Chancellor said, the fact of the father stating that he had received intelligence about four or five years ago that Mary was dead, suggested the belief that the intelligence was recent, and the probability was, that the event had happened a short time before the intelligence reached him.] As to the second point, there was always great unwillingness in a court of equity to presume a failure of issue, and nothing short of the clearest evidence was admitted to raise such a presumption.

*Wakefield*, in reply, as to the first exception, the Vice-Chancellor having intimated his opinion that the second exception must be allowed.

The Vice-Chancellor said, the evidence before the Master created a difficulty in the way of his finding that the lady was dead before 1821. It was true that the Master had found that nothing had been heard of her since 1814, but then the evidence stated, that about four or five years ago the father received intelligence of her being dead, and this would be in Dec. 1839, being 18 years after 1821. It was singular that no further intelligence should have been obtained since 1821, and it was a pity that further inquiry had not been made. His Honour said, he thought the Master was justified in finding that there was no evidence before him to enable him to state when she died, but he thought further inquiry should be made; and he should therefore allow the second exception and overrule the first; and refer it back to the Master to prosecute the former inquiry, with liberty to the Master to state special circumstances.

*Watson v. England*. Dec. 4, 1844.

### \* Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

#### NEW TRIAL.—MISCONDUCT OF JURORS.—AFFIDAVITS.

*Though it is a rule, that the affidavits of jurors cannot be received for the purpose of impeaching or supporting their verdict, yet where a rule nisi for a new trial has been obtained on affidavits imputing personal misconduct to individual jurors, the affidavits of these jurors, in answer to the charge, are admissible in showing cause against the rule.*

*Prideaux* had obtained a rule calling upon

the plaintiff to show cause why there should not be a new trial of this cause, which had been tried before the Under-Sheriff of Somersetshire. It appeared that an application to stay execution had been made at chambers, on affidavits imputing misconduct to certain jurors, and that a rule nisi for a new trial had afterwards been drawn up, on reading these affidavits.

*J. W. Smith*, who appeared to show cause, was about to read affidavits by three of the jurors, who swore that they believed themselves to be the individuals pointed at, which affidavits contained a denial of the alleged misconduct, when

*Prideaux* objected, that as no affidavit had been used in the application to the court for the rule nisi, it was not competent to the plaintiff to use affidavits on showing cause against the rule, and cited *Atkinson v. Meredith*.

*Patteson, J.*—The rule was drawn up on reading the affidavits made on the application at chambers. How can it be said that no affidavit was used on moving this rule?

*Prideaux*.—Then the affidavits of jurymen are not admissible to show what took place previous to the delivery of their verdict in open court. The case of *Straker v. Graham* shows that the court will not receive an affidavit of an admission by one of the jurymen, that the verdict was in fact decided by lot; and an affidavit by the jurymen himself is there placed upon the same footing. If affidavits of individual jurors cannot be used to impeach a verdict, neither can they be used to support it; for if such conflicting testimony could be received, no verdict would be safe.

*J. W. Smith*, contra.—The parties by whom these affidavits are made identify themselves with the individuals alluded to, and it is competent for them to deny the imputations cast upon their conduct.

*Patteson, J.*—No doubt the rule is, that when the jury have once pronounced a verdict in open court, statements by individual jurors, for the purpose of impeaching or supporting that verdict, are not admissible; but where personal misconduct is imputed to a man, whether a jurymen or any other person, it would be most unjust to deprive him of an opportunity to deny the misconduct in question. These affidavits may be read.

*Prideaux* then contended that the verdict was against evidence; and on that ground the rule was made absolute.

Rule absolute.

*Standewick v. Watkins*. Q. B. P. C. M. T., 1844.

### Exchequer.

[Reported by A. P. HURLESTONE, Esq., Barrister at Law.]

#### PARTICULARS.—CONTEMPT OF COURT.

An order had been made by a judge in cham-

bers, under the 2 Will. 4, c. 39, s. 17, requiring the attorney of the plaintiff to deliver particulars of the plaintiff's residence. The plaintiff furnished his attorney with a false statement, which was accordingly delivered: Held, that the plaintiff was liable to an attachment for a contempt, though the judge's order had not been made a rule of court.

In an action on the 9 Anne, c. 14, s. 2, to recover money won at play, an order had been made under the 17th section of the Uniformity of Process Act, 2 Will. 4, c. 39, directing the plaintiff's attorney to deliver to the defendant's attorney an account in writing of the particulars of the place of residence and occupation of the plaintiff. In pretended compliance with this order an account was delivered, which turned out to contain an untrue statement of the plaintiff's residence. The account was given by the plaintiff to his attorney, and the latter delivered it, not knowing it to be false. A rule had been obtained calling on the plaintiff to show cause why an attachment should not issue against him. The judge's order had not been made a rule of court.

*Lush* showed cause. The plaintiff is not liable to an attachment, inasmuch as he is not the party enjoined by the order to deliver the particulars. The 2 Will. 4, c. 39, s. 17, requires that any attorney whose name is indorsed on a writ, shall on demand in writing by the defendant, declare forthwith whether such writ has been issued by him, and if he shall answer in the affirmative, then he shall also, in case the court or judge shall so order or direct, declare in writing the profession, occupation, and place of abode of the plaintiff, on pain of being guilty of a contempt of the court from which such writ shall appear to have been issued. The section makes no mention of the plaintiff in the action, therefore, no obligation is cast on him to obey the order. This is a new experiment to create a contempt for disobedience of a judge's order which has not been made a rule in court. The statute declares the attorney disobeying the order liable to be punished for a contempt, which shows that he would not have been liable at common law. [*Pollock, C. B.*—Any misconduct before a judge at chambers might be a contempt of court. The mode in which the jurisdiction of the Master in Chancery is enforced, is by making misconduct before them a contempt of the great seal. An order of a judge made under the authority of an act of parliament, is an instrument which requires obedience, and if the plaintiff imposes on the court, it appears to me that it is not necessary to make the judge's order a rule of court, in order to attach him for a contempt.] It is conceded that where the order is made by a judge under the authority of an act of parliament, the act of the judge may be considered as the act of the court, but that does not apply to this case, as the plaintiff is not mentioned in the statute. All the authorities relating to the subject of contempt of court are to be found in the case of *Miller v. Knox*, 4

Bing. N. C. 574, from which it appears that a mere nonfeasance will not create a contempt. [*Pollock, C. B.* Here there is something more than a nonfeasance, the plaintiff has given a false residence to his attorney. Suppose a plaintiff gave as his residence some absurd or impossible place, could there be any doubt but that the court might at once punish him for a contempt. *Alderson, B.*? Or suppose a party gave false information to a sheriff, whereby he returned nulla bona. *Pollock, C. B.* Or if a party represented himself as the defendant, in order that the sheriff might take him and the real defendant escape?] A party not mentioned in a rule is not liable to an attachment for disobeying it. *Doe d. Lewis v. Ellis*, 9 Dow. P. C. O. S. 944. He also cited *Rea v. Hopner*, 2 C. M. & N. 525; *Baker v. Rye*, 4 Dowl. 689.

*Platt and Butt*, in support of the rule. If several persons conspire together, and the consequence of the act is an evasion of the order of the court, might they not all be attached? So, where an officer is about to arrest a party, and several concur to defeat their object, can it be said that each is not liable to be attached for a contempt? The same rule will apply where misrepresentation is made use of for the purpose of defeating the course of justice. Fraud has no higher privilege than violence. The proceedings before a judge stand in *pari passu*, with proceedings before the court. Suppose, when an attorney was about to serve a rule of court, a party seized the rule and destroyed it, would not that be a contempt of court? Whenever a party is liable by reason of violence, he is equally so in consequence of misrepresentation. The operation of the 2 W. 4, c. 39, is to render every person who aids in contravening it, liable to a contempt. Arch. Prac. 1262, 1263.

*Pollock, C. B.* If the false statement has been delivered by the attorney of the plaintiff, with the same knowledge and the same object, there could have been no doubt about the case. But it is said, that the plaintiff is not liable to an attachment, because he is not mentioned in the act of parliament, which makes the attorney alone liable. I cannot assent to that view without deciding whether this case is one within the authority of the court. I am strongly inclined to think that all the instances put are cases of contempt. We are not, however, called upon to decide that, but I cannot help expressing my opinion, that wherever force or fraud is used for the purpose of preventing the course of justice, the parties are liable to an attachment. It is sufficient in this case to discharge the rule on payment of costs, which may be set off against the judgment.

*Parke and Alderson, B.*'s concurred.

Rule discharged.

*Smith qui tam v. Bond.* Exchequer, Hilary Term, Jan. 11, 1845.

## ADMISSION OF SOLICITORS.

## NOTICE.

The Master of the Rolls has appointed Tuesday the 28th of January instant, at half after three in the afternoon, at the Rolls Court, Chancery Lane, for swearing in solicitors.

Every person desirous of being sworn on the above day, must leave his Common Law Admission at the Secretary's Office, Rolls Yard Chancery Lane, on or before Monday the 27th January instant, at three o'clock.

Secretary's Office, Rolls,  
15th January, 1845.

## TRANSFER OF CHANCERY CAUSES.

## NOTICE.

The causes named in the underwritten list will, on the 22nd day of January instant, be transferred from the paper of the Master of the Rolls to the paper of the Lord Chancellor, unless the solicitors for all the parties in any of such causes *shall, before the said 22nd day of January*, sign and deliver at the office of the Secretary of the Master of the Rolls, a request in writing that the causes named in such request respectively may remain in the paper of the Master of the Rolls; in which case the causes not named in any such request will alone be transferred at the time aforesaid.

Barlow	v.	Gains
{ Wynn		Haveningham
{ Same		Lovat
{ Fernyhough		Grinders
{ Same		Same
{ Same		Same
{ Rogers		Vasey
{ Radburn		Jervis
{ Same		Brundrett
{ Hare		Hill
{ Same		Radburn
{ Fraser		Wood
{ Hammett		Ledsam
{ Colling		Reece
{ Flower		Wartopp
{ Same		Same
{ Montresor		Montresor
{ Watson		Parker
{ Johnson		Rowland
{ Lewis		Lewis
{ Wintle		Burton
{ Barton		Chambers
{ Same		Bicknell
{ Same		Chambers
{ Farquhar		East India Company
{ Morgan		Same
{ Dick		Lacey
{ Gosling		Carter
{ Johnson		North
{ Agers		Nicholson
{ Same		Same
{ Wheateley		Bunn
{ Lloyd		Jenkins
{ Same		Same
{ Same		Same

Harrison	Ruston
{ Nouaille	Flight
{ Same	Follett
Sabine	Williams

By Order of the Master of the Rolls. 15th  
January 1845.

## CHANCERY CAUSE LISTS.

Lord Chancellor.  
Hilary Term, 1845.

## APPEALS.

S. O. {	Clun Hospital	El. Powis	appeal and
	Attorney-Gen.	do.	petn.
S. O. {	The Sheffield	The Sheffield & Rotheram	
	Canal Co.	Railway Co.	appeal
	Tullock	Hartley	appeal pt. bd.
Day to	Strickland	Strickland	
be	Ditto	Boynton	do.
fixed {	Ditto	Strickland	
	Spalding	Rading	do.
	Miller	Craig	do.
S. O. G. {	Cochrane	Cochrane	do.
	Lord	Colvin	do.
	Davenport	Bishop	do.
	Clifford	Turrell	do.
	Forbes	Peacock	do.
	Mqs. of Hertford	Ld. Lowther	do.
	Ditto	Ditto	do.
	Tyler	Hinton	appeal
	Miln	Walton	do.
	Vandeleur	Blagrave	do.
	Crosley	Derby Gas Co.	do.
	Parker	Bolt	do.
	Ladbrooke	Smith	do.
S. O. {	Hitch	Leworthy	do.
	Coore	Lowndes	do.
	Drake	Do.	do.
	Dalton	Hayter	do.
	Baggett	Meux	do.
	Payne	Banner	do.
	Dobson	Lyall	do.
	Moorat	Richardson	do.
	Millbank	Collier do. want of parties	
	Deeks	Stanhope	3 appeals
	Wiltshire	Rabbitt	appeal
	Smith	El. of Effingham	do.
	Archer	Hudson	do.
	Turner	Newport	do.
	Attorney-Gen.	{ Masters & War-	
		dens &c. of the	appeal.
		{ City of Bristol.	
	Trulock	Robey	do.

Master of the Rolls.

Hilary Term, 1845.

Stand over, James v. James, cross cause.  
Till suppl. cause, Johnson v. Todd, Same v. Same,  
Same v. Same, fur. dirs. and costs and petition.  
Attorney-General v. Potter, fur. dirs. and costs.  
After appeal, Langley v. Fisher.  
Trinity Term, Hope v. Hope, Same v. Same, Same  
v. Same,  
Till mentioned, Richardson v. Horton, Same v.  
Taylor, Same v. Derby, fur. dirs. and costs.  
With suppl. cause, Conolly v. Farrell, part heard.  
Last day in term, Walton v. Potter  
Trinity Term, Attorney-General v. Bedingsfield.

*Till suppl. bill*, Hele v. Bexley, Same v. Same, exceptions.  
*Till suppl. bill*, Gibson v. Nicol, Same v. Alsager.  
 Attorney-General v. Mayor &c. of London, demurrer.  
 Master v. De Croismare, demurrer  
 Tristram v. Roberts, West v. Roberts, demurrer of H. L. Williams.  
 Chidwick v. Prebble, part heard.  
 Fulton v. Gilmore  
 Bloomfield v. Eyre  
 Ward v. Audland, fur. dirs. and costs  
 Bradley v. Groom  
 Robertson v. Morrice  
 Shalcross v. Hibbertson, Same v. Dickson, Same v. Slagg, Same v. Gawthorne, Same v. Same, Same v. Chester, fur. dirs., and costs, and petn.  
 Otley v. Gilby, fur. dirs. and costs  
 Curtis v. Robinson  
 Mayor of Ludlow v. Charlton  
 Kilner v. Leech, Same v. Day.  
 Attorney-General v. Ironmongers' Co., exons. fur. dirs. and costs  
 Score v. Ford  
 Bordieu v. Bromley, Same v. Same, Scholfield v. Same, fur. dirs. costs and petn.  
 Kightley v. Trimbeay, Same v. Same  
 Waring v. Lee, Same v. Same, Same v. Samè, fur. dirs. and costs  
*Short*, Attorney-General v. Lewis, Same v. Same, fur. dirs. and petn.  
 Earl of Dandonald v. Norris  
 Marquis of Hertford v. Lord Lowther, exons.  
 Beauclerk v. Ashburnham  
 Wiggins v. Wiggins, Same v. Linthorne  
 Attorney-General v. Troughton  
 Barlow v. Gains  
 Attorney-General v. Long, Same v. Cobbe, Same v. Troughton  
 Wynn v. Heveningham, Same v. Lovatt, fur. dirs. and costs  
 Fernyough v. Ginders, Same v. Same, Same v. Same, fur. dirs. costs and petn.  
 Rogers v. Vasey, fur. dirs. and costs  
 Radburn v. Jarvis, Same v. Brundrett, Hare v. Hill, Same v. Radburn, fur. dirs. and costs  
 Fraser v. Wood, exons. fur. dirs. and costs  
 Hammatt v. Ledsam, fur. dirs. and costs  
 Collins v. Reece, fur. dirs. and costs  
 Flower v. Hartopp, Same v. Same, fur. dirs. and costs  
 Montresor v. Montresor, fur. dirs. and costs  
 Davenport v. Charlesworth, Charlesworth v. Mannors, rehearing  
 Watson v. Parker.  
 Johnston v. Rowlands  
 Lewis v. Lewis  
 Barton v. Chambers, Same v. Bicknell, Same v. Chambers, fur. dirs. and costs  
 Wiatle v. Burton, fur. dirs. and costs  
 Farquhar v. East India Company, Morgan v. Same, exons.  
 Dick v. Lacy, fur. dirs. and costs  
*With Conolly v. Farrell*, Conolly v. Butcher  
 Gosling v. Carter  
 Johnson v. North  
 Agers v. Nicholson, Same v. Same, fur. dirs. and costs.  
 Weakley v. Bunn, fur. dirs. and costs.  
 Lloyd v. Jenkins, Stephens v. Same, Stephens v. Stephens  
 Harrison v. Ruston  
 Nouaille v. Flight, Same v. Follett, fur. dirs. and costs  
 Sabine v. Williams

Attorney-Gen. v. Haytesbury Hospital  
 Harvey v. Mount  
*By order*, Attorney-Gen. v. Mayor of Plymouth  
 Flack v. Longmate, Same v. Seagrave, exon. fur. dirs. and costs  
 Cutbush v. Cutbush, fur. dirs. & costs  
 S. O. *Short*, Parker v. Parker  
 Godby v. Thompson, Same v. Boytun  
 Robey v. Whitewood  
 Witham v. Capon  
 Graig v. Watson  
 Meryon v. Collett  
*Part heard*, Hornby v. Bispham, Same v. Kay, Same v. Brandon, Same v. Ward, Same v. Houghton, Same v. Yates, fur. dirs. & costs  
 Carlon v. Farlar  
 Attorney-Gen. v. Govs. of Hartlebury School  
 Attorney-Gen. v. Bishop of Worcester, fur. dirs. and costs  
 Campbell v. Crook, exceptions  
 Walklen v. Histed  
 Mann v. Ricketts, Same v. Halifax, rehearing  
 Lethbridge v. Chetwoode  
 Bricknell v. Standford, Same v. Selby, Same v. Obbard, fur. dirs. and costs.  
 Smyth v. Lowndes  
 Vesey v. Fyson  
 Sivel v. Abraham  
 Hawes v. Westall  
 Boulter v. Boulter, Same v. Same, Same v. Same, fur. dirs. costs and petition  
 Stopford v. Chaworth, Stopford v. Masters, Stopford v. Stopford, fur. dirs. and costs  
 Gordon v. Lowe, Same v. Same  
 Rickards v. Gurney, Rickards v. Crozier, Rickards v. Bothamley, fur. dirs. and costs  
 Lord Nelson v. Lord Bridport, exons. fur. dirs. and costs  
 Gee v. Gurney  
 Angerand v. Parry  
 Attorney-Gen. v. Eckley, fur. dirs. and costs  
 Lindgren v. Lindgren  
 Bennett v. Cooper  
 Hodgkinson v. Cooper.

### Vice-Chancellor of England.

#### PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Thelluson	Ld. Rendlesham demur.
Emmett	Mitchell plea
To fix { Richards	Wood cause
a day { Richards	Wood exons. and fur. dirs.
pt. hd. { Montague	Cator } fur. dirs. and costs
{ Ditto	Tebbs } costs
{ Ditto	Kenworthy cause
S. O. Templeman	Brelsforth
S. O. Freeman	Roberts 4 causes
S. O. Roberts	Marchant part heard
{ Wilson	Wilson
{ Ditto	Ditto
{ Ditto	Foster
{ Breeze	Hawkins pt. hd.
{ Ditto	English
Williams	Williams
Boaxman	Cazenove pt. hd.
Rogers	Rogers fur. dirs. and costs.
{ Greenwood	Taylor } exons. 2 sets
{ Cox	Pearce
Preston	Melville fur. dirs. and costs
{ Pearce	Brooke } 5 causes fur. dirs.
{ Butcher	Jackson } pt. hd.
Pemberton	Jackson



Hastlewood	Partridge
Mapp	Elcock
Do.	Scott
Grand Junction	
Canal Co.	Dimes at request of deft.
Emerson	Gibbins fur. dirs. and costs
Dickson	Moss
Goldsbrough	Hawdon
Hiles (pauper)	Moore
Do.	Gleason
Snow	Hole
Do.	Sime
Christ's Hosp.	Granger exons
Clowes	Stanton fur. dirs. and costs
Fyson	Foster
Ditto	Mackreth
Gurney	Goggs fur. dirs. and costs
Jackson	Brooke
Middleton	Elliott
Barnacle	Nightingale exons
Gray	Gray
Aubrey	Hoper 5caus. fur. dirs. & costs.
Casley	Monypenny
Miller	Harris
Casley	Monypenny
Sinnett	Matthias
Wilson	Williams
Gardner	Marshall } exons. & fur.
Ditto	Follett } dirs.
Kidd	North exceptions
Benett	Ravenhill ditto
Ditto	Ditto fur. dirs. and costs
Gould	Uttermare ditto
Kidd	North exons. 3 sets
Cloak	Rolfe 4caus. fur. dirs. & costs
Hodson	Ball 7 causes do.
Borrodaile	Maroh } further directions
March	Ditto } and costs
Youde	Jones 4 causes do.
Ridgway	Gray fur. dirs. and costs
Nicholson	Wilson } ditto
Pinder	Ditto }

New Causes.

Falkner	Birkett
Biddles	Biddles
Ashton	Parker
Timmis	Brassey
Ditto	Fletcher
Read	Keith

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

M.Tm.	Dodsworth	Kinniard at request of deft.
1845.	Do.	Ditto
June 13	Clayton	Ld. Nugent fur. dirs. & costs
	Doyle	Cartwright } fur. dirs. part
	Ditto	Cary } heard
	Adams	Paynter
S.O.	Ditto	Lloyd
	Ditto	Paynter [and costs]
S.O.	Norton	Pritchard 4 causes fur. dirs.
	Gibson	D'Este exceptions
	Bury	Allen
	Do.	Pinnell
	Hamond	Swayne
	Ditto	Dickinson
	Meads	Shelling
	Bond	Warden
	Samuel	Gibbs fur. dirs. and costs
	Parker	Marchant 6causes do.
	Parker	Smith exceptions.
	Wright	Taylor fur. dirs. and costs

New Causes.

Cockrill	Pitchforth
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Geldart	Randell
Wadley	Wadley
Stevens	Stevens
Ellice	Alsger
Alexander	Loft

Vice Chancellor Stigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Blay	Skipworth part heard
Broad (pauper)	Robinson
Barnett	Dennis
To fix a day	Vincent
	Bishop of Sodor and Man
Masey	Moss fur. dirs. and costs
Ferrand	Wilson
Ditto	Turner
Emperingham	Short } exons. and fur.
Ditto	Newton } dirs.
Brooks	Jopling
Davies	Davies
Moore	Stafford
Paget	Belcher
Morison	Morison exons.
Challen	Shippin
Key	Wall exons.
Att.-General	Northcote
Aspinall	Andes fur. dirs. and costs
Hughes	Lipscombe
Smith	Beasley exons. & fur. dirs.
Cuttel	Crowther
Coltman	Harrison
Logan	Gilchrist
Drew	Ching
Lucy	Barnes fur. dirs. and costs
Strutt	Lloyd
Jones	Beckett
M'Gregor	Topham fur. dirs. and costs
Ashbee	Ashbee } ditto
Ditto	Theobald }
Speakman	Speakman
Harrop	Howard
Ditto	Heywood
Strangeways	Corbett fur. dirs.
Towgood	Hankey 5causes do. & ptn.
Brown	Brown fur. dirs. and costs

New Causes.

Bursey	St. Barbe
Packham	Gregory
Phelps	Deardin
Davis	Davis
Ditto	Welsh
Brown	Baston

THE EDITOR'S LETTER BOX.

We are obliged to a learned friend for his specimens of short Forms of Deeds, and shall make them known to our readers; but we doubt whether our correspondent, or any other prudent practitioner will follow them.

The communications on Swearing Affidavits, Service of Process, Unauthorised Professors of the Law, Liberality of Lawyers, and Misappropriation of Law Fees and Emoluments, shall be attended to.

We refer our readers to the report (p. 324, ante) of the proceedings at Manchester on the formation of "The Provincial Law Societies' Association." We have also received a report of the annual meeting of "The Manchester Law Association," to which we shall advert in our next number.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, JANUARY 25, 1845.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

**THE TRANSFER OF PROPERTY  
ACT.**

As the approaching session draws near, the question naturally becomes a common one—“What is to be done with the Transfer of Property Act?” Here is an act affecting to a certain extent all dealings with land, which has experienced a somewhat unusual fate. No act has in so short a space of time given rise to so numerous and at the same time so conflicting a mass of construction and commentary. If we look over the pile of books and editions of the act on our table, *alp* rises on *alp*, and we get confused at the very thought of it. Certainly no act of thirteen sections has ever led, in so short a space of time since its passing, to the shedding so much ink or the blotting so much paper, as this unfortunate act. The profession has taken the only practicable course with respect to it. In despair of understanding who is in the right as to it; distracted by the Babel of interpretations which have arisen on it; not knowing who to trust or who to believe; finding *this* commentator is flatly contradicting *that*; and that while this learned gentleman thinks this clause a good one, and all the others impracticable, another, equally learned and equally confident that he is right, considers the alleged good one the worst of the batch: in this state of things, we say the profession has taken the only safe and wise course, and has resolved to have nothing to do with it—to *eachew* it altogether; nay, to shake off the dust of their feet in testimony against it. Bold indeed would be the man

who would venture, in Lincoln's Inn, to alter almost any existing practice by reason of it. We have already observed that we have seen no one deed which professes to operate under it; and the only alteration which we believe to have been made by any one in consequence of it, is in the “limitation to trustees to preserve contingent remainders,” through which clause, we believe, in some instances, after much doubt, a hesitating pen has occasionally been drawn.

But then there is this difficulty in the matter: we are speaking, after all, of a limited circle. We can only be acquainted with practice in the metropolis, and of that comparatively small portion of deeds which find their way to the metropolis. Who is to tell what is taking place elsewhere? What may not some unlucky wight at this moment be doing, supposing the act to be a good and perfect one? into what riot may he not be running? what abortion may he not be creating? A deed, be it remembered, is a solemn act; when once executed, it cannot be altered or revoked. Besides, it is laid by; it may remain for years untouched, but its operation is going on all the time. These considerations awaken very serious reflections.

Although, therefore, we may say here that the profession does not act under it, yet no human intelligence can divine what that profession includes; and nobody, therefore, can know what may not have been already done under it.

Besides, this is not all: ignorance may have done much, but design may have done more. By some (certainly not in our opinion the best advised) it has been

thought and said that a married woman might assign under it her reversionary interest in a *chase in action*; others have declared, (and these were even wilder, in our opinion,) that under the act a married woman might convey any interest in land by deed, without any private examination, and that *pro tanto* the act abolishing fines and recoveries is repealed. Now all this is, we think, incorrect; but who can say how far these opinions (for they have been deliberately given) have been acted on? and if the deeds acting on them are put by for twenty years, and come before the court at the expiration of that period, who can tell what construction may not be placed on them? Here, then, again are the grounds of grave doubt and considerable apprehension.

What, then, is to be done? Confessedly an unhappy act has been passed. We are not now inquiring as to who is to blame in the matter; we are certainly disposed to blame no one; but we are satisfied that we have already recommended the only course that can properly be taken under the circumstances. The act and the whole matter should be referred to competent persons, who will consider the subject, and advise what, under the circumstances, is best to be done. The act must not be allowed to remain on the statute book.

We have thought it our duty to state the difficulties of the case; but we do not wish to act as alarmists. It is quite possible that no harm as yet has been done; but we have glanced at the consequences that may ensue, if the step that we have all along pointed out as the necessary one be not speedily taken.

## EQUALISATION OF STAMP DUTIES.

AMONG the subjects which we trust will engage the attention of the legislature in the ensuing session, is the revision of the stamp laws. We have already repeatedly adverted to this subject, and we cannot think that its consideration will be long delayed. Not only are the present stamp acts in a state of great confusion, but the present duties are unequally levied. We also think, that for the mere purposes of revenue they are inadequately and improperly distributed. They press too heavily on small transactions, and are in

many respects ill adjusted. We are glad, therefore, to see that one part of these laws is exciting much public attention,—we mean the legacy duty. Some time ago we called attention to the only mode in which it appeared to us a modification of these duties might be obtained. At present, as we all know, no duty is paid on the succession to real estate. But any attempt to equalise real and personal property in this respect would, we are quite assured, be hopeless, in a parliament in which the landed interest has (and in the opinion of many people ought to have) a predominant influence. But if some duty were taken off real property, which is now placed upon it, then it is possible some equalisation of this duty might take place: and this might be made to tend both to public and individual advantage. We then referred to the suggestion of Mr. Stewart as to this, in his work on the Reform of the Law, (p. 19.) “It is well worthy of consideration,” says that gentleman, “whether the revenue now derived from the alienation of land might not be more advantageously raised by a duty on its devise and descent. Funded and other personal property may be alienated without any duty being payable, but large duties are payable on the death of their owner, in the shape of probate and legacy duty. The proposed change would render the duties uniform, and would be a decided boon to the landed interest, and operate considerably to advance the value of land.”

There is much in this observation. And the result of the motion made on the subject by Mr. Elphinstone, last session, was, that an address to the Queen was granted, to ascertain how far the distinction in this respect which is made in this country between real and personal property obtains in foreign countries. Lord Aberdeen, on the 2nd of April, 1844, wrote to the proper authorities in this respect, and a return has just been printed of the answers, which is highly interesting. We have not space to enter at length into these answers; but we may state that the general result is, that the distinction that is made on this important point in this country is not warranted by the practice of any other country. In some countries no duty at all of this sort is payable; but where there is a duty, it is equally levied on both real and personal property.

We need hardly point out that if that

great drawback on the alienation of property—the stamp—were removed or lessened, that, among other classes, the legal profession would be peculiarly benefited. A return has also been printed of the capital on which legacy duty has been paid, and the amount of revenue received for stamp duties on legacies, in the year ending 5th January, 1844. We think it not unlikely that this subject may be now engaging the attention of government, more especially as the surplus in the revenue will enable them the more freely to make the experiment.

### THE VACANT COMMISSIONERSHIP OF BANKRUPTS.

WE sincerely regret to have to state that a vacancy has occurred in the Court of Bankruptcy, by the death of Sir C. F. Williams, the senior Commissioner. This learned person has lived a long professional life in the honourable and careful discharge of his duties, and will long be remembered for his great quickness and ability at the bar, and his zeal and impartiality in his judicial capacity, as well as for his peculiarly agreeable manners in private life. We may probably hereafter be able to give some further particulars as to him. We have heard many rumours as to his successor; and there can be no doubt that this very desirable situation would be agreeable to many; but we cannot carry the information in this respect beyond that of the newspapers, except that probabilities appear to be in favour of Mr. Serjeant Atcherley, and his appointment would be a very popular one.

### RESIGNATION OF MR. BARON GURNEY.

WHEN we last week adverted to the recent rumours of judicial changes, we hinted that if a vacancy on the bench were speedily created, it would not be in the quarters indicated. We had then reason to suppose that Mr. Baron Gurney was about to resign. This event has since taken place; and we have every reason to believe that Mr. Platt will succeed him.

### NOTICES OF NEW BOOKS.

*An Outline of the Practice in Lunacy, under Commissions in the nature of*

*Writs de Lunatico Inquirendo; with an Appendix, containing Forms and Costs of Proceedings.* By JOSEPH ELMER, of the office of the Commissioners in Lunacy. London: Stevens and Norton. 1844. Pp. 287. Engu.

THIS is a very useful epitome of the Practice in Lunacy. The new act, and the orders under it, rendered such a publication desirable; and Mr. Elmer, of the Commissioners' Office, has had the best means of stating accurately the proper course of proceeding, and we think he has very creditably executed his task.

The Scope of the work will appear by the following extract from the table of contents:—

“ 1. The application for the Commission. 2. Obtaining the Commission. 3. Proceedings under the Commission. 4. Verdict and Inquisition. 5. Reference of the subsequent proceedings to the Commissioners. 6. Enquiries as to Heir-at-Law and Next of Kin, Committees, Property, and Maintenance. 7. Instructions given by Commissioners thereon. 8. Petition for confirmation of Commissioners' Report. 9. Order confirming Report. 10. Security given by Committees. 11. Sureties for the Committees. 12. Enlarging time for perfecting Security. 13. Approval of the Security. 14. Grant of Custody. 15. Vacating Grant. 16. Costs of Proceedings. 17. Proceedings under the Eleventh General Order for provisional care and maintenance. 18. Proceedings as to the managing, setting, or letting the Estate, or otherwise respecting the Person or Property of any Lunatic under the Thirteenth General Order. 19. Letting the Lunatic's Estate. 20. As to passing Committees' and Receivers' Accounts under the Fourteenth General Order: Times of making up and bringing in accounts; Form of account; Parties attending on accounts; Proceeding on the account; Costs on the account; Swearing to and filing account; Time of paying in and investing balance; Charging the Committee or Receiver with interest in case of default. 21. Proceedings under the Fifteenth General Order for determining which of the Next of Kin shall attend on the proceedings before the Commissioners. 22. Reducing Committee's Security. 23. Discharge of a Committee. 24. Appointment of a new Committee. 25. Special Orders of reference. 26. As to the appointment of a Receiver of the Lunatic's Estate. 27. Advertising for Heir-at-Law and Next of Kin. 28. Taking an account of Debts due from the Lunatic. 29. New Sureties for a Committee or Receiver. 30. Depositing Deeds with Commissioners. 31. Delivering out Deeds. &c. 32. As to a Traverse. 33. As to a Supersedeas of the Commission. 34. If the Lunatic is in England, and his Property in Ireland, and vice

*versus*. 35. Commissions to examine Witnesses. 36. Proceedings on the Death of the Lunatic. 37. Lunatic Trustees. 38. As to the Duties of Committees: 1st—Of the Person; 2nd—Of the Estate."

To show the manner in which Mr. Elmer has compiled his Treatise, we shall extract his statement of the *Duties of Committees of Lunatics*:—

#### "1ST. COMMITTEE OF THE PERSON.

"The duties of a Committee of the Person relate exclusively to the personal care of the lunatic. It is his duty to fix upon the residence of the lunatic and his attendants, and to regulate the establishment and other provisions of his maintenance, support, and comfort. In making these arrangements, the committee must bear in mind the scheme or plan of maintenance which was prepared and considered at the time the maintenance was fixed, and if change of circumstances lead him to depart from it, he must nevertheless see that the lunatic has all the comforts and advantages which the sum allowed for his maintenance can provide. The committee should personally visit the lunatic from time to time, and the two points to which the committee's attention should be particularly directed are,—first, to afford to the lunatic everything which the allowance for maintenance will provide and can contribute to his comfort; and secondly, to see that every care is taken to promote his bodily health and mental improvement, and for this latter object that he has good medical advice. If the committee of the person is allowed so much as he shall expend in the maintenance of the lunatic, not exceeding a limited annual sum, he must in such cases show, from time to time, what the annual expenditure has been. It is very desirable in all cases that the committee of the person should keep such accounts of his expenditure as may enable him, if required, to show in what way the allowance has been applied. If the whole amount allowed cannot with any advantage be expended in the maintenance, the committee should, and doubtless usually does, take only so much as he expends, the balance remaining to the credit of the lunatic's estate.

"In the event of any question arising as to the due application of the sum allowed for the lunatic's maintenance, the committee of the person may be called upon to render an account of it.

"The Visitors of Lunatics under the authority of the act of the 3rd & 4th Will. IV. cap. 36, visit and report upon the care and treatment of each lunatic once every year; and in making their visits, and the inquiries connected with them, they are furnished with a statement of the income of the lunatic, and the allowance for his maintenance; and in these respects they consider how far the accommodations provided are adequate to the sum allowed for the purpose, and whether the lunatic has the comforts which his malady and income admit of.

"It is also the duty of the committee of the person of the lunatic, with the concurrence of his usual medical attendant, if there be one in frequent attendance upon him, to make a report half-yearly to the Visitors of Lunatics as to the state of mind and bodily health of the lunatic, and also to report any important change occurring in his health.

"The custody of the person of the lunatic being wholly vested in the committee of the person by the Grant, he may, unless any order of the court has fixed the place of the lunatic's abode, (as is sometimes done,) vary the lunatic's residence as occasion may require, and as may seem most for his comfort and advantage; but if the order of the Lord Chancellor has fixed the place of residence, his lordship's order must be obtained before any change of residence can be made.

"On any change of residence of the lunatic, the committee must give immediate notice thereof to the Visitors of Lunatics, whether the change be for a short or long period. The committee must also give due information to the Visitors of the name and residence of the medical attendant, and of his (the committee's) own place of abode.

#### "COMMITTEE OF THE ESTATE.

"The duties of a Committee of the Estate are, to receive the income of the lunatic's estate; to pay, under the direction of the Lord Chancellor, all sums becoming due from it; to get in any outstanding personal estate not on proper security; to see to the due investment of all moneys of the lunatic; and generally to collect, and sustain, and defend the lunatic's estate, as the lunatic himself would do if of sound mind; but the committee must have the sanction of the Lord Chancellor for any extraordinary steps.

"Amongst other things, he is to see that the lunatic's estate is properly kept in repair, and insured from loss by fire; or, in the words of the bond, 'to see the houses, buildings, and structures of the lunatic to be well and sufficiently repaired, and so kept and maintained during the continuance of the Grant.' He is to let the lunatic's houses and lands to eligible tenants, for the best rents he can obtain, at his own discretion, if the letting be from year to year; or if on lease, then according to agreements made by him in the first instance, and afterwards approved by the Commissioners and confirmed by the Lord Chancellor. He has also to take charge of the title-deeds relating to the lunatic's estate, or otherwise to see that they are kept in safe custody. To pay, from time to time, to the committee of the person the sum allowed for the lunatic's maintenance, unless other provision is made in that respect by the Lord Chancellor. To take legal or other proceedings, under the approval of the Commissioners and the confirmation of the Lord Chancellor, for the defence of the lunatic's estate. To collect and receive the rents and profits, to make all necessary and proper payments and allowances on account

thereof, keeping regular accounts of such receipts and payments, and to pass such annual or other accounts as may be required by the Commissioners within the times limited by them for that purpose. To pay into court, within the time also limited for that purpose, the balances due from him on passing his accounts; to cause such balances to be laid out within the time fixed for that purpose; and to cause the dividends on the fund in court to be duly invested as they are received.

"It is also the duty of the committee of the estate to pay the per centage under the 3rd and 4th Will. IV. cap. 36, on the income of the lunatic, which is thereunder payable into the Bank of England, to the credit of the Accountant General of the Court of Chancery, to the account of the Board of Visitors of Lunatics.

"The committee of the estate should from time to time see that his sureties are living, and in good circumstances; as on the passing of his accounts he is now required, under the General Orders, to make affidavit that his sureties have not died, nor been declared bankrupt, or become insolvent."

## QUESTIONS AT THE EXAMINATION.

*Hilary Term, 1845.*

### I.—PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any and what law lectures?

### II.—COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Give the names of some of the principal kinds of action at common law.

6. In a case of seduction, who is the party to bring the action, and what action must be brought?

7. When is a master answerable for damage done by his servant? In the case of a coachman driving against and injuring a cart, must the master be present to render himself liable?

8. Within what period must an action be brought on a simple contract debt?

9. How long does a writ remain in force? and if the defendant keeps out of the way to avoid service, is there any mode of compelling his appearance?

10. In a writ of summons, would it be a sufficient description if the defendant was described as "A. B. of the City of London;" and what description is required by the statute?

11. Writ served in any term or vacation—Within what time should the plaintiff declare to prevent judgment of Non Pros.?

12. An action is brought on a charter party; the defendant's witnesses reside at Singapore—How can he procure their testimony?

13. In an action for goods sold and delivered, the plaintiff claims by his particulars 25*l.* Before plea, defendant takes out a summons to stay on payment of 15*l.* only, which the plaintiff refuses to accept: on the trial the plaintiff recovers only 15*l.*, to what costs will he be entitled?

14. A. and B., partners, bring an action for a client C. When the cause is at issue, A. dies, B. continues the action, and fails. C. afterwards refuses to pay the costs incurred.—Who must sue C. for the costs?

15. In a town cause, if an issue is served in Hilary Term, or in the vacation preceding, and the plaintiff does not proceed, when is the earliest period in which the defendant can move for judgment as in case of a nonsuit? State the practice also in a country cause; and would it make any difference if the issue was joined in a non-issuable term, as Easter, instead of an issuable term, as Hilary?

16. A plaintiff obtains judgment on a promissory note for 18*l.* with 6*l.* for his costs. Can he take the defendant in execution?

17. When a cause goes to trial, and a juror is withdrawn, what effect has that upon the costs of the trial?

18. A sheriff puts an execution into a defendant's house. The day after he has a notice served upon him that the goods belong to the defendant's brother-in-law. Under these circumstances, how must he proceed?

19. An attorney at Christmas delivers bills to five clients. One for borrowing 1000*l.* on mortgage; one for defending an action for a libel; one for filing a bill on equity to compel the completion of a purchase; one for defending a client at the Sessions House, charged with an assault; and the fifth for preparing a marriage settlement. Are any, and which of these bills, liable to be taxed? And if the bills are delivered on the 1st January, and not paid; when can the attorney commence an action to recover them? If the attorney had died, and the bills were delivered by his executor, would that make any difference as to the taxation?

### III.—CONVEYANCING.

20. In preparing an abstract of title on a sale, is the vendor's solicitor personally liable for omitting to state all the incumbrances within his knowledge? And in examining an abstract with the title deeds on behalf of a purchaser, what would be the consequence to the solicitor personally of his overlooking notice of any incumbrance contained in any instrument abstracted and produced for examination, whether such notice were contained in the abstract or otherwise?

21. What protection does the assignment of a term of years in trust for a purchaser of the inheritance afford the latter? and in what cases is such protection annulled or qualified by his having had at, or prior to, such assignment, notice, express or implied, of the estate

or incumbrance against which he may claim such protection?

22. Where a power of appointment over real estate is executed, from whom does the appointee immediately take in point of estate, viz., the party creating, or the party executing the power? and state the reason.

23. Where a power is executed by will, at what point of time does it take effect?—And would there be any difference in this respect if the power were executed by deed with a power of revocation to the appointor?

24. Prior to the Fines and Recoveries Act (3 & 4 Will. 4. c. 74), if tenant in tail, with the immediate remainder or reversion in fee to himself, levied a fine, he created what was called a base fee, which immediately merged in the reversion, and became subject to any charges affecting the latter, the title to which he was also in future obliged to show.—What difference in this respect has been made by the above statute, both as respects past and future cases?

25. What are the requisites to the valid executions of wills made since the present Wills Act came into operation as respects the age of the testator, form of attestation, and otherwise?

26. State the effect of marriage upon the will of a man before and since the Wills Act.

27. A testator devises real estate to A, for life, with remainder over to A's first and other sons successively in tail male, with remainder to testator's own right heirs—under such a devise, when does the ultimate remainder become vested in the heir of the testator, viz. at his decease, or at the time of the failure of the prior limitations?

28. A dies seized of real estate without issue, an intestate, leaving his grandfather and his (A's) mother, and a brother and sister him surviving.—Which of these is his heir?

29. In a devise of real estate to A. in fee, in trust for B. in fee, A. by deed disclaims the estate.—What is the effect of such disclaimer? viz., does it vest the estate in the testator's heir, or in B.?

30. A testator seized in fee of lands, and also of the tithes of them, devises the lands without expressly including or showing his intention to include the tithes—Will the latter pass to the devisee of the lands?

31. Where under the tithe commutation Act, tithes have been merged by an owner in fee simple of both the tithes and the lands out of which they are issuing, and he afterwards sells the lands as tithe or rent-charge free—Must he deduce his title to the tithes?

32. In a register county is it necessary that the memorial of a deed should be executed by a granting party, and attested by one of the witnesses to the execution of the deed by a granting party? or can the deed be duly registered without either, and which of these formalities?

33. If a vendor claim leasehold estate in a register county as executor or legatee, can a purchaser from him insist upon the will being registered in either case, and state a reason?

34. In a register county where the vendor of real estate is both heir at law and devisee, is it material that the will should be registered? and is it material if he should be devisee only?

#### IV.—EQUITY, AND PRACTICE OF THE COURTS.

35. If a defendant who has appeared and answered an original bill cannot be found to be served with a subpoena to answer a bill of revivor, what is the course of the plaintiff in such a case?

36. When a husband and wife are defendants in a suit, in what case is the wife entitled to an order to answer separately?

37. Does the "*prochain ami*" of an infant incur any and what liability in becoming such *prochain ami* for prosecuting a suit?

38. What is the difference in effect of the allowance of a *partial* demurrer and that of a *general* demurrer?

39. Where a plaintiff is suing a defendant both at law and in equity for the same matter, what is the course of proceeding to be adopted by the defendant under such circumstances?

40. Can a defendant in a suit be examined as a witness on behalf of a co-defendant in the same suit, and under what authority?

41. In what cases does a suit abate so as to render a bill of revivor necessary?

42. In what cases, and upon what grounds, is a writ of "*ne exeat regno*" granted?

43. Is there any and what mode, and under what authority applied, for the prevention of the transfer of stock, standing in the books of the Governor and Company of the Bank of England, and for the payment of the dividends thereon by the bank without resorting to a suit?

44. Can witnesses be examined *vide voce* in chancery, and upon what occasions?

45. At what distance of time do deeds, bonds, and other writings prove themselves, and thereby render their proof unnecessary?

46. In what case is a mortgagee compelled to file a bill of foreclosure to enable him to enforce payment of his principal and interest?

47. Is it necessary in all cases to institute a suit for the purpose of having guardians appointed to, and of obtaining an allowance for the maintenance and education of infants? If not, state the exceptions to the rule.

48. In suits to carry into execution the suits of a will, in what case is it necessary or desirable that the heir at law should be made a party?

49. Explain the difference between *legal* assets, and *equitable* assets, and state how each are administered amongst creditors.

#### V.—BANKRUPTCY AND PRACTICE OF THE COURTS.

50. State the proceedings now necessary to obtain a fiat in bankruptcy.

51. What amount of debt or debts will support a fiat?

52. Should the petitioning creditor's debt prove to have been insufficient, is the fiat void or not? and state the reasons.

53. Can a compulsory act of bankruptcy now be effected, and by what means, since the abolition of imprisonment for debt?

54. Can a creditor who has taken his debtor in execution, or who has taken his goods under a *fiat facias*, sue out a fiat against him?

55. Is a mortgage debt made payable only after six months' notice, a good petitioning creditor's debt, if notice has not been given?

56. Is it necessary that a petitioning creditor should prove his debt under the fiat before he can vote in the choice of assignees?

57. Doth the death of a bankrupt affect the fiat and in what way?

58. A debt cannot be proved if barred by the Statute of Limitations. To what time does the six years apply:—to the time of proof, or of the issuing of the fiat?

59. Does bankruptcy affect the rights of the bankrupt as executor, and does property in his hands, as such executor, pass to the assignees?

60. What alteration has the late bankrupt law made respecting the bankrupt's certificate? and state the old and new practice.

61. If a plaintiff in an action at law, or suit in equity, become bankrupt, can the assignees continue the action or suit in his name?

62. Can a landlord distrain for rent when the messenger is in actual possession of the bankrupt's goods on the premises?

63. Does a lease to the bankrupt vest in the assignees, and are they liable to the bankrupt's covenants, or can they repudiate the lease? and if so, is the bankrupt liable to payment of future rent, and performance of future covenants?

64. If the drawer, acceptor, and first indorsee of a bill of exchange, become bankrupt, can a second indorsee, who holds the bill for a valuable consideration, prove the whole amount under each estate, and receive dividends from time to time on such amount, and to what extent?

#### VI.—CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. Are there any, and what forgeries, now punishable with death?

66. State what is meant by "Exhibiting articles of the peace," and how the same is effected?

67. What is a libel?

68. Can a libeller be prosecuted criminally, as well as proceeded against civilly? and if so, in what manner and for what reason?

69. Can the truth of a libel be made a defence to a criminal prosecution, as it can to a civil action? and if not, for what reason?

70. What is burglary? and state some of the requisites to support the charge.

71. What is the legal distinction between the crimes of murder and manslaughter?

72. What is a criminal information, and under what circumstances will it be granted.

73. By what court, and on what evidence, will leave to file a criminal information be allowed?

74. In what cases is it usual to grant an information against magistrates?

75. When will an information lie against parish officers?

76. Define the offence of perjury, and the circumstances which constitute the offence?

77. What evidence is necessary of the oath having been taken?

78. State the consequences to the offender of a conviction for perjury?

79. Has there been any, and what recent alteration, in the course of proceeding in the Crown Office?

We mentioned last week that the number of candidates who had given notice of examination for this term was reduced to 109. This comparatively small number has fallen off still further, only 78 having left their testimonials of due service. All except one attended, and were examined on Thursday.

This is the smallest number since the examination was instituted.

#### COMMON LAW EXAMINERS.

HILARY TERM, 8 VICTORIA, 1845.

It is ordered, that the several Masters for the time being of the Court of Queen's Bench, Common Pleas, and Exchequer respectively, together with Samuel Amory, Benjamin Austen, Michael Clayton, William Loxham Farrer, Richard Harrison, Bryan Holme, Robert Wheatley Lumley, Edward Rowland Pickering, Charles Ranken, Charles Shadwell, William Tooke, and Edward Archer Wilde, gentlemen, attorneys, be and the same are hereby appointed Examiners for the present year, to examine all such persons as shall desire to be admitted attorneys of all or either of the said courts; and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of and subject to the provisions of the rule of all the courts made in this behalf in Hilary Term, 1836.

Approved by the Judges of the Court of Queen's Bench, 16th January, 1845.

By the Court,

C. R. TURNER.

Approved by the Judges of the Court of Common Pleas, 17th January, 1845.

By the Court,

GRLEFFITH.

Approved by the Barons of the Court of Exchequer.

By the Court,

SAMUEL DARE.



## ATTORNEYS TO BE ADMITTED.

*In Easter Term, 1845.**Queen's Bench.**Clerks' Names and Residence.**To whom Articled, Assigned, &c.*

Allen, Beauprè Philip Bell, 5, Adelaide Road, Hampstead; Kenton Street; and Wim- botsham . . . . .	Frederick Browne Bell, Downham Market.
Bradshaw, John, Chesterfield . . . . .	John Charge, Chesterfield.
Boydell, George, Chester . . . . .	Francis Boydell, Chester.
Brown, Francis, Peterborough . . . . .	Thomas Broughton, Peterborough and Whit- tlesey John Broughton, Peterborough
Barnett, Richard Humphreys, 25, Chester Terrace, Regent's Park . . . . .	Charles James Palmer, Bedford Row.
Brine, Thomas Charles Augustus, Parkstone; and Longfleet . . . . .	William Dean, Guildford Street.
Bonner, George, Gloucester; and James Str., Buckingham Gate . . . . .	Benjamin Bonner, Gloucester. Edward Washbourn, Gloucester.
Bragg, William Nicholas, 4, King's Row, Pentonville; and Exeter . . . . .	John Gidley, Exeter.
Buck, Charles, 11, New Ormond Street, Bloomsbury; and Great Ormond Street . . . . .	Thomas Swainson, Lancaster.
Brandt, Charles Henry, 4, Warwick Court, High Holborn; Manchester; Roll's Buildings; and Temple . . . . .	Henry Charlewood, Manchester.
Brittan, Alfred, 7, Trelleck Terrace, Pimlico; Bristol; and Howard St., Strand . . . . .	Meshack Brittan, Bristol.
Burman, Woollaston John, Whitehead's Grove, Chelsea; and Balsall Heath . . . . .	Henry Moore Griffiths, Birmingham.
Cook, Charles, 11, Egremont Place, New Road; Newbury; Norfolk Street, Strand; and Warwick Court . . . . .	George Gray and Henry Godwin, Newbury.
Churton, John, Warrington; and Great Bolton . . . . .	William Beaumont, Warrington. James Bayley, Warrington.
Clough, Charles, Bradford . . . . .	Richard Tolson, Bradford.
Crawford, Samuel, Leeds . . . . .	Thomas Mann Lee, Leeds.
Crust, Thomas, Beverley . . . . .	Henry John Shepherd, Beverley John Myers, Beverley.
Corser, Edward, 10, Great Ormond Street; and Birmingham . . . . .	Henry Corser, Stourbridge.
Cornochan, Thomas Horsley, 36, Bedford Row; and Bawtry . . . . .	Frederick Hawksley Cartwright, Bawtry Charles Bell, Bedford Row.
Coote, Frederick John, 36, Essex St., Strand; and Cambridge . . . . .	John Eaden, the younger, Cambridge.
Capel, William, Cheltenham . . . . .	Joseph Sandford, Winchcombe. George E. Williams, Cheltenham.
Cooper, George Halcott, 4, Millman Street; and New Ormond Street . . . . .	George Cooper, East Dereham.
Calder, Edward, Cheltenham; and York . . . . .	Luke Thompson, York.
Cole, John, Lostwithiel; and 2, Baker Street, Pentonville . . . . .	Edward Coode, Junior, Saint Austell.
Driver, Samuel Neale, Hanover Park, Peck- ham . . . . .	Edward Hugh Edwards, Bedford Row. Owen Pape Holmes, Liverpool Street, City.
Dryden, Erasmus Henry, 15, Tavistock Place; Kingston-upon-Hull; and Sidmouth St. . . . .	William Dryden, Kingston-upon-Hull.
Dyott, John Philip, the younger, Lichfield . . . . .	John Philip Dyott, Senior, Lichfield.
De Carteret, Revoire Edward, 80, Lombard Street; and Plymouth . . . . .	John Edward Elworthy, Plymouth.
Edwards, Samuel, 25, Lincoln's Inn Fields . . . . .	John Archbould, Thrapston. John B. Millington, Boston. Charles Tahourdin, Lincoln's Inn Fields.
Edwards, Thomas Gold, Denbigh . . . . .	Edward Hugh Edwards, Mitre Court Build- ings, Temple. Thomas Evans, Denbigh.

- Eastlake, John, 20, Featherstone Buildings; and Plymouth . . . . . George Shute Eastlake, Plymouth.
- Frere, Edward Daniel, 5, Newman Row, Lincoln's Inn Fields . . . . . John George Smith, Crediton.
- Fisher, Thomas, Wigan . . . . . George Concanen, Lincoln's Inn Fields.
- Fawdon, John Thomas, Alnwick; and Wilmington Square . . . . . Lodge Moore, Warrington,
- Greeves, Edwin Thompson, 9, Hartland Terrace, Kentish Town; and Wellington Road, near Birmingham . . . . . Hull Terrell, Basinghall Street.
- Garratt Joseph, 21, Fleet Street; and 3 and 4 St. George's Circus, Blackfriar's Road . . . . . William John Carr, Alnwick.
- Grayson, James, Newcastle-upon-Tyne . . . . . William John Beale, Birmingham.
- Green, Octavius, 33, Devonshire Street, Bloomsbury; and Chesterford . . . . . John William Danby, Lincoln.
- George, William Griffith, 46, Great Russell St., Bloomsbury; Cardigan; and Newman Street . . . . . Ralph Walters, Newcastle-upon-Tyne.
- Grayson, James, Newcastle-upon-Tyne . . . . . George Joseph Twiss, Cambridge.
- Gaunt, Thomas Foster, 10, Dalby Terrace; and Skinner Street . . . . . Thomas George, Cardigan.
- Hall, Isaac, 19, Manchester Buildings, Westminster; and Newman Street . . . . . Ralph Walters, Newcastle-upon-Tyne.
- Hayward, Charles Woodcock, 1, Garden Place, Lincoln's Inn Fields; and Cambridge . . . . . Thomas Gaunt, Skinner Street.
- Hammersley, Samuel, 26, Milton Street, Dorset Square . . . . . John Wickham Flower, Bread Street.
- Herring, Charles Thomas, Bedale . . . . . Christopher Pemberton, Cambridge.
- Hodgson, Charles, Selby; and Howden . . . . . Ralph Thomas Brockman, Folkestone.
- Hutton, Frederick, 10, Smith Square, Westminster; and Great George Street . . . . . Charles Attwaters, Queen Street.
- Henderson, Alfred, 17, Great Russell Street, Bloomsbury; and Exeter . . . . . Henry Robinson Glaister, Bedale.
- Hird, Richard, 10, Seymour Crescent; Mirfield; and Huddersfield . . . . . John Dodsworth, Selby.
- Hodgetts, Thomas, 5, River St., Pentonville; Aston, near Birmingham . . . . . Mark Fothergill, Selby.
- Ind, Robert Laundry, Cambridge . . . . . Robert B. Porter, Howden.
- James, Frank, 16, Cromer Street, Brunswick Square; and Merthyr Tydfil . . . . . Joseph Parkes, Great George Street.
- Jepson, Charles, 41, Carey St., Lincoln's Inn Fields . . . . . James Terrell, Exeter.
- Kellock, Thomas Creaser, Park Place, Loughborough Road; Brixton; and Totness . . . . . Thomas Leadbeater, Mirfield.
- Kirkpatrick, Edward Bruce, 1, Regent Place East, Regent Square; Whitchurch; and Liverpool . . . . . Clement Ingleby, Birmingham.
- Langham, Samuel F., the younger, 10, Bartlett's Buildings . . . . . Henry Bradley, Cambridge.
- Long, Walter Searley, 31, Nicholas Lane; and George St., Mansion House . . . . . William Perkins, Merthyr Tydfil.
- Langford, Henry, Westham, Sussex . . . . . Abraham Story, Durham.
- Langham, James George, the younger, 10, Bartlett's Buildings; and Hastings . . . . . Gustavus T. Taylor, Featherstone Buildings, Holborn.
- Leach, Francis, 26, Russell Square . . . . . Charles Michelmores, Totness.
- Last, Henry, 16, Old Square, Lincoln's Inn; Vernon Place; and Hadleigh . . . . . Frederick Benthall, Coleman Street.
- Mayhew, George Jeremiah, 13, New North Street; and New Ormond Street . . . . . John Eden, Liverpool.
- Meynell, Gerard Coke, 2, Little Ryder Street; and Bury Street . . . . . Samuel F. Langham, Senior, Bartlett's Buildings.
- George Shute Eastlake, Plymouth.
- John George Smith, Crediton.
- George Concanen, Lincoln's Inn Fields.
- Lodge Moore, Warrington,
- Hull Terrell, Basinghall Street.
- William John Carr, Alnwick.
- William John Beale, Birmingham.
- John William Danby, Lincoln.
- Ralph Walters, Newcastle-upon-Tyne.
- George Joseph Twiss, Cambridge.
- Thomas George, Cardigan.
- Ralph Walters, Newcastle-upon-Tyne.
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- John Wickham Flower, Bread Street.
- Christopher Pemberton, Cambridge.
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- Henry Robinson Glaister, Bedale.
- John Dodsworth, Selby.
- Mark Fothergill, Selby.
- Robert B. Porter, Howden.
- Joseph Parkes, Great George Street.
- James Terrell, Exeter.
- Thomas Leadbeater, Mirfield.
- Clement Ingleby, Birmingham.
- Henry Bradley, Cambridge.
- William Perkins, Merthyr Tydfil.
- Abraham Story, Durham.
- Gustavus T. Taylor, Featherstone Buildings, Holborn.
- Charles Michelmores, Totness.
- Frederick Benthall, Coleman Street.
- John Eden, Liverpool.
- Samuel F. Langham, Senior, Bartlett's Buildings.
- Samuel Long, Portsea.
- Nicholas Gedy, George Street.
- R. Foreman, Tonbridge Wells; and Westham.
- J. George Langham, Senior, Bartlett's Buildings; and Hastings.
- William Henderson, Lancaster Place.
- Isaac Last, Hadleigh.
- R. Cheere, King's Bench Walk.
- William Howard, Colchester.
- John Gardiner, Whitehall Place.

## PRACTICE IN CONVEYANCING.

To the Editor of the Legal Observer.

## EXCHANGE OF FREEHOLDS.

A. and B. of themselves verbally agree to exchange freeholds. A. is to make over to B. some houses and land, and pay all costs whatever attending the exchange (except for attested copies); and B. is to make over to A. his freehold house and give A. five pounds.

A. instructs his solicitor, who does not seek to convey by deed of exchange, but sends two draft-deeds of release to B. for perusal. B. sends these drafts to his solicitor, who demands an abstract of title to A.'s houses and land. A.'s solicitor refuses to deliver any abstract of title, alleging that B. formerly purchased freeholds of A. under the very same title. B.'s solicitor still insists on an abstract of title, alleging that he was not solicitor for B. under such former purchase, and also insists on his right to prepare the conveyance of A.'s houses and land to B., and requires A. to pay the costs of such conveyance. A.'s solicitor objects to furnish any abstract of title or to pay B.'s solicitor any more than 13s. 4d. for perusing the draft releases he sent to B.

What is the correct practice in such a case?

A. B.

## COSTS OF UNCERTIFICATED ATTORNEYS.

AN opinion has prevailed to some extent, that although an attorney who had not duly renewed his certificate could not recover costs against his client; yet that the client, as between party and party, might recover his costs.

It has, however, been recently determined by the Masters of the Common Pleas, that the only costs which can be allowed between party and party, where the attorney is uncertificated, are the costs out of pocket, that is to say, payments made in carrying on the proceedings, and not any fees or emoluments to the uncertificated attorney himself, although really paid to him by the client. The Masters also require that proof should be given of the actual payment to the attorney, and it must appear that the disbursements were properly made by him.

In the case in which this rule was laid down, an affidavit was made of payments to the attorney which exceeded the disbursements, but the Master allowed only the sums properly disbursed in the action.

## RECEIPT STAMP.

MUST the stamp on a receipt for rent cover the gross amount, without making any deduction for income tax; or, if the receipt is expressed to be for the rent, less income tax, would a stamp for the net amount be sufficient?

It has been contended, on the one hand, that the stamp acts impose a stamp only on the amount actually paid, and are to be construed strictly; and on the other hand, that the tenant is entitled to a duly stamped receipt for his rent, and the receipt for income tax which he produces is to be treated as money, that tax being imposed upon the landlord, but payable in the first instance by the tenant, who is authorised to retain the amount out of his rent; and that, therefore, the transaction must be viewed as the tenant paying the whole of his rent, and the landlord repaying the income tax paid for him.

In the case of land tax paid by the tenant, or any other deduction, (such as for repairs, which by contract, and not by statute, the tenant was entitled to make) must the stamp be for the gross amount of rent?

I cannot find anything in the acts or decisions to settle these questions, though I believe the practice is, to be on the safe side, and give a receipt stamped for the gross amount of rent. I should be glad to have the opinions of some of your readers on the subject.

A SUBSCRIBER.

## EVILS OF ABOLISHING IMPRISONMENT FOR DEBT.

To the Editor of the Legal Observer.

SIR,—This day I had a writ of trial down for hearing at the sheriff's office; to bring the matter to this stage, of course all the usual machinery of an action at law was brought into motion: last night I was served with a notice by a perfect stranger, that he had purchased all the defendant's stock, &c. in defendant's house, &c., that if I levied an execution on the judgment to be recovered in this suit, I, the attorney, plaintiff, and sheriff would be immediately sued for damages for an illegal seizure. Now, I have every reason to believe that this is nothing but a gross attempt to swindle the plaintiff out of his just demand; the defendant has prevailed upon some scoundrel like himself to set up a false claim to the property; but supposing the notice to be a *bona fide* one, and that in fact the defendant has sold his goods, &c., of course the plaintiff would be guilty of a trespass if he levied, and liable to all the consequences, so that in either event the plaintiff must lose his debt, and under the circumstances I must lose my costs. Now, had I, as heretofore, the power of issuing an execution against the defendant's person, all this loss and misery would have been saved to my unfortunate client; the original debt, only 6l. 9s. 6d.,

would have been paid and no costs incurred: so much for the abolition of arrest for debt under 20*l.* in this instance.

Another case I will briefly notice—a lady entitled to an annuity of 80*l.*, residing in a small furnished house, was sued by myself for 12*l.* 10*s.*; upon being served with the writ she sold off her goods, realized upwards of 70*l.*, put the money into her pocket, and went to Greenwich, and now lives in furnished lodgings, and sets her creditors at defiance. The trustees of her annuity have been applied to; they say they are bound to pay her the annuity, as no other person's receipt would be a discharge to them. Is it not really shameful that a person in this lady's situation cannot be compelled to pay her debts?

A gentleman in Somerset House receiving a salary of 150*l.*, tells me, in answer to my application of payment of 8*l.* 6*s.*, that I cannot arrest him, and that my client may do his best and worst, and be —. I will not trouble you with enumerating other cases, which would fill up the entire space of your journal. I have only to add, that numerous applications are made to me daily to recover small debts, and my answer is, the legislature has robbed you of your formerly legitimate means of recovering, and you must be content to lose your claims.

Is it possible that the law can be allowed much longer to continue in this state?

T. W. H.

## UNAUTHORIZED PROFESSORS OF THE LAW.

*To the Editor of the Legal Observer.*

SIR.—The vast number of persons who practise the law without authority is really surprising; not a few are merely attorneys in Jamaica and other colonies, acting here largely in conveying and common law, by a regularly admitted attorney dividing the profits with him. In other cases the party acts as the clerk of an attorney, doubtless with some understanding as to the fees. I am aware of the difficulty in these cases in bringing facts to light, and making matters so transparent as to convince the heads of the law; but it strikes me that if the Incorporated Law Society was authorised, on a complaint being made, to summon parties implicated before them, and to examine witnesses, &c. on oath, the result would be highly beneficial to the profession and the public at large.

Jan. 16, 1845.

L.

## MISAPPROPRIATION OF COPYHOLD FEES AND EMOLUMENTS.

*To the Editor of the Legal Observer.*

SIR,—I have long witnessed the inconvenience and loss sustained by clerical lords of manors in right of their fees and others, per-

mitting persons not having a legal education, to prepare their leases and hold manorial courts. The blunders perpetually committed by such are only what might have been anticipated, but I confess I was not prepared to see professional men, and those among the highest of the profession, willingly sacrificing their fair and legal emoluments on admissions and surrenders at copyhold courts, allowing those emoluments to pass into the pockets of the lords of the manors, being contented with a trumpery fee of a guinea or so, for holding the court.

I venture to say, and am enabled to prove, that such disgraceful agreements have been made, and with some high persons in the realm too, but conceiving them to be more honoured in the breach than in the observance, I hope they will instantly be thrown up, and their fair and usual fees on all transactions in the manorial courts insisted upon,—or I shall feel it incumbent on me to be more specific, and to bring the matter before the public, and probably the legislature itself.

At present I will only state that the honour and character of the profession is at stake, and the high individuals seeking to participate in the stewards' fees, ought to blush, if not for themselves, at least for their agents, who make such disreputable and grinding bargains.

NEMO.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

BOND DEBT.—ACTION AGAINST OBLIGOR'S HEIR.—CREDITORS' SUIT.—DECREE.—INJUNCTION.

*To an action on a bond against the heir-at-law of the obligor, who died intestate, the defendant pleaded that he had no lands by descent from the obligor available for payment of bond debts. Replication, that he had; and issue joined thereon, and notice of trial given. A creditors' bill was then filed against the intestate's real and personal representatives, and a decree was pronounced for an account; notice of which decree, together with notice of motion for an injunction to stay the action, was served on the plaintiff therein; but the injunction being refused by the Vice-Chancellor, the trial proceeded to verdict. Held, on appeal, that the injunction ought to have issued, and that after the trial it should be issued to stay execution, the plaintiff-at-law to have his costs up to the time he got notice of the decree.*

In April 1842, Mr. Owen Williams brought

an action of debt on a bond against Robert Herbert Jones, as heir-at-law of Humphrey Herbert Jones, the obligor, who died intestate a short time before. To that action Robert H. Jones pleaded that he had no lands by descent from the obligor available for payment of bond debts. The plaintiff replied that he had; and thereupon issue was joined.

On the 20th of February, 1843, the plaintiff gave notice of trial of the action at the then ensuing assizes at Beaumaris, which were fixed to begin on the 21st of March. R. H. Jones was then a lunatic, and Henry Vincent Jones was appointed committee of his estate. On the 28th of February, a creditor of the deceased intestate filed a creditors' bill against his widow and administratrix, and against the said heir-at-law and his committee. On the 2nd of March a decree was made in that cause, directing the usual accounts to be taken of the intestate's real and personal estate, and of his debts, &c.; and on the same day also notice of that decree was served on the solicitor of the plaintiff in the action. A copy of the decree was served on the plaintiff himself on the 10th of March, and on the 14th he was served with notice of motion for an injunction to stay the action. That motion was heard on the 18th of March by the Vice-Chancellor, and refused. The defendant, on the 20th, gave notice of the same motion by appeal before the Lord Chancellor, and on the 23rd that motion came to be heard by his lordship; Mr. Wakefield and Mr. Faber, in support of it, citing the following, among other cases: *Terwest v. Featherby*,<sup>a</sup> *Lord v. Wormleighton*,<sup>b</sup> *Price v. Evans*.<sup>c</sup>

Mr. Bethell and Mr. Goldsmid, contra, contended that the delay was fatal, and that certain mortgagees ought to be made parties.

The Lord Chancellor postponed his judgment. The trial took place in the mean time, and there being no defence, a verdict was given for the plaintiff.

The Lord Chancellor gave judgment to this effect: Owen Williams had commenced an action against Robert Jones, as the heir-at-law and representative of Humphrey Herbert Jones, to recover the amount of a bond for 400*l.*, given by him in the year 1821. The defendant in that action pleaded that he took no lands or real estate by descent as the heir of Humphrey H. Jones; the plaintiff replied that he had; and so issue was joined. In the mean time, a bill had been filed for the administration of the estate of H. H. Jones, by Mr. Rouse, on behalf of himself and the other creditors of the deceased, and a decree for that purpose was obtained on the 2nd of March, 1843. Notice of trial of the action at law had been served on the 21st of February, for the then ensuing assizes at Beaumaris. On the 2nd of March, the day the decree was pronounced, notice of the decree was served on the solicitor of Owen Williams, who refused to

postpone the trial of the action. And on the 10th of March notice of motion for an injunction to stay the trial was given, but the Vice-Chancellor refused that motion, on the ground that it came too late. It becomes, therefore, of importance, in deciding on this matter, to look with attention to the dates.

The argument pressed on the court below, for the defendant in equity, was, that the application came too late, because it was made on the eve of the trial. Now, the notice of the decree in the creditors' suit was given on the 2nd of March, the moment the decree was obtained; and the attorney having, on the 6th, refused to postpone the proceedings at law, notice was given, on the 10th, of the motion for the injunction: and the trial, at the earliest, could not have taken place before the 21st of March. The plaintiff's attorney had therefore almost full three weeks' notice of the decree; and as he was entitled to all costs incurred before the notice, there seems to be no sufficient reason for refusing the injunction on the ground of the lateness of the application to the court; *Lord v. Wormleighton*.<sup>d</sup> [His lordship applied that case to the present.] Any delay in an application to stay a trial before judgment would properly resolve itself into a mere question of costs.

It was further argued here, in support of the decision of the court below, that as the defendant at law had pleaded that he had no land by descent as the heir of H. H. Jones, the plaintiff in the action had a right to go to trial for the purpose of falsifying that plea; and *Brook v. Skinner*<sup>e</sup> was cited. In order to understand the value of that argument, it was proper to consider the effect of the trial. If the jury found that the defendant had lands of the intestate, the value of those lands would be assessed, and the plaintiff in the action would be entitled to execution against the defendant for his own debt; but on the principle of decided cases the defendant might hold such in discharge of the intestate's debts, as far as he had paid under the execution, otherwise he might be harassed by actions by the intestate's debtors *ad infinitum*. It follows, therefore, that the plaintiff at law, if he succeeded in his action, would withdraw the amount of his debt from the assets that ought to be divided among the whole of the creditors.

It had been said that the decree itself was not sufficiently comprehensive to include the plaintiff at law, but upon inquiry I find that it was a proper decree, in the customary form. The plaintiff at law may go into the Master's office and prove his debt under this decree. All that was necessary to do in the first instance has been done, and there seems to be no occasion to have made the mortgagees parties to the suit. I am of opinion, therefore, that the injunction ought to have been granted. As I understand, however, that the trial at law

<sup>a</sup> 2 Meriv. 480.

<sup>b</sup> Jac. 148.

<sup>c</sup> 4 Sim. 514.

<sup>d</sup> Jacob, 148.

<sup>e</sup> 2 Meriv. 481, n.

<sup>f</sup> See 3 W. & M. c. 12, ss. 5 & 6.

has already taken place, the injunction must therefore be to restrain the plaintiff at law from issuing execution or taking any further proceedings, on payment of his costs up to the time when he or his attorney was served with notice of the decree.

*Rouse v. Jones*, March 23, 1843, and Nov. 1844.

### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

#### VENDOR AND PURCHASER.—SALE BY AUCTION.—PRACTICE.—COSTS.

*The purchaser at a sale by auction will not be allowed to repudiate his contract, if the conditions of sale state that persons bidding shall not be allowed to retract their biddings, notwithstanding he may have countermanded his bidding immediately after the lot was knocked down to him, and informed the auctioneer that he was bidding for another.*

*The costs of affidavits filed in support of, or in opposition to, a motion are allowed, although not used, unless they should be tendered, and the court should refuse to allow them to be read.*

THIS was a motion on the part of James Broadhurst, an alleged purchaser of certain hereditaments in the pleadings mentioned, that the order nisi declaring him the purchaser might not be made absolute, but that he might be discharged from his purchase. The premises in question were put up to sale by auction in the month of September last, with the approbation of Master Richards, and with the consent of the mortgagee, in pursuance of a decree of the Court of Exchequer. Mr. Broadhurst was the solicitor of the mortgagee, and by the affidavits in support of the motion it was stated that some conversation took place before the sale as to the reserved price, when Mr. Broadhurst was informed that the estate would not be sold for less than 6,000 guineas. It was also stated in the same affidavits that Mr. Broadhurst attended at the sale, and having bid 5,000*l.* the property was knocked down to him as the highest bidder; but that previously to the same being so knocked down he countermanded his bidding, and he afterwards remonstrated with the auctioneer for declaring him the purchaser, whom he informed that he was bidding for the mortgagee, and that he repudiated the purchase altogether. The affidavit of the auctioneer corroborated the statement as to the repudiation of the contract; but in other respects the affidavits filed in opposition to the motion were conflicting, and it appeared that the morning after the sale Mr. Broadhurst told the mortgagee that he would give 100*l.* to be off his purchase.

*Stuart and Cantrien* in support of the motion

said, it was evident the whole transaction was founded in mistake, for Mr. Broadhurst supposed he was bidding for the mortgagee, and the auctioneer when he was informed of the mistake insisted upon retaining the bidding, although aware of the error, and of Mr. Broadhurst's determination not to abide by his offer. It had been repeatedly held, that where there was a misunderstanding or mistake, the court would not compel specific performance. *Malins v. Freeman*, 2 Keen 26; *Mason v. Armitage*, 13 Ves. 25; and it was equally clear that a bidding at a sale by auction might be countermanded at any time before the lot was actually knocked down, because the assent of both parties was necessary to make the contract binding. *Sugd. V. and P.* vol. i. p. 37; *Routledge v. Grant*, 4 Bing. 653. It appeared also in this case the biddings were not written down till afterwards, and there was no writing to take the case out of the Statute of Frauds.

The Vice-Chancellor, without calling on the counsel in opposition to the motion, said, the question was, whether the court should permit a sale made with the consent of the mortgagee to be rendered useless by the conduct of his solicitor. As to the allegation that the purchase was made by mistake, he did not think that there was any ground for it, for no answer had been given to the statement, that the next morning Mr. Broadhurst said he would give 100*l.* if he could be released from the contract. It was proved also that there were six biddings previously to that at which Mr. Broadhurst was declared the purchaser, and it was not pretended there was any mistake with respect to them. With regard to the other questions that had been raised, it appeared by the conditions that no person was to be allowed to retract his bidding, and no signing of the contract was required. The motion must, therefore, be refused with costs. [His Honour in alluding to the general rule with regard to the allowance of costs for affidavits, said, it was not necessary to read affidavits for the purpose of having them allowed in costs; but that if they were proposed to be read and the court refused to hear them, the costs of those rejected were not allowed.]

*Freer v. Rimmer.* Dec. 18, 1844.

### Vice-Chancellor of England.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

#### PRACTICE. — PETITION. — PAYMENT TO ADULTS.

*Although by the rule of the court money will not generally be paid under a bequest which would include after-born children, the tenant for life being in advanced years, except upon recognizances being given to account, in case of any children being born subsequently; yet, where the amount small, it is in the discretion of the court in such cases to dispense with the recogni-*

zances, and to require merely the personal undertaking of the parties to account as the court shall direct.

THIS was a petition by a widow and three out of her five children, praying that three-fifths of the sum of 102*l.* 14*s.*, Consolidated Bank Annuities, might be sold, and the produce of such sale, together with the dividends which should have accrued due thereon, might be paid to the widow, Elizabeth Wood, for her sole and separate use, and upon her sole receipt. A testatrix had, by her will dated the 19th of May, 1837, bequeathed her personal estate to trustees, upon trust (*inter alia*) to pay the interest of 100*l.* to Elizabeth Hogg, wife of Richard Wood, of Newcastle-upon-Tyne, for her life, "for and at her separate use and appointment, and not to be subject to the debts or control of her husband, and at her death the principal to be divided amongst her children equally at the ages of twenty-one years, and the interest to be applied to their maintenance in the mean time." The testatrix died on the 15th August, 1837. A suit for the administration of her estate was instituted, and upon further directions an order was made, in 1843, that one of the executors should, on or before January then next, pay into the bank the sum of 100*l.*, with the privity of the accountant-general, to the credit of the cause, to an account entitled "The account of the annuitant Elizabeth Wood, and the legatees her children;" and that the same, when paid in, should be laid out in the purchase of Bank 3*l.* per Cent. Annuities, in the name and with the privity of the accountant-general, in trust in the cause, to the like account. It was further ordered, that the dividends to accrue due on the Bank Annuities which might be so purchased should, from time to time, as the same should accrue due, be paid to the said Elizabeth Wood, for her separate use and on her sole receipt, during her life, or until the further order of the court. The above amount was paid into the bank by the executor, and invested in the sum of 102*l.* 14*s.* Consolidated Annuities. The petition stated the above facts, and also that the petitioner was a widow, aged sixty-six years; that the three children who joined in the petition had attained twenty-one years, and were desirous that their shares should be paid to their mother. The petition was unopposed.

Mr. Bates appeared in support of it, and cited *Payne v. Long*, 19 Ves. 571; *Depplis v. Goldsmid*, id. 566, S. C. 1 Mer. 417; *Long v. Hodges*, Jac. 585.

December 16. Sir James Wigram, V. C.—In this case some property was left to a female for life, with remainder to her children on attaining twenty-one. She has five, three of whom are all adult. According to the terms of the will, after-born children may take. Application was made to me, upon petition of the tenant for life and the adult children, that the money might be paid out. The only objection I felt was, that other children might possibly be born hereafter. The lady, however, is

sixty-six years of age. No doubt, according to the practice of this court, the court might make the order prayed, upon recognizances being given to account for the money, if there should be any children born afterwards. Sir William Grant refused to make such an order without recognizances, although the tenant for life was sixty-nine years of age. (*Fraser v. Fraser*, Jac. 584.) It appears to me, however, that where the fund is small, as in this case, the court may order it to be paid out, taking no other security than the undertaking of the party to account as the court may direct. The Vice-Chancellor of England, as I am informed, has been in the habit of making orders in this form,\* and therefore I shall do it in this case. The registrar will see that the parties are adult.

*Brown v. Pringle.* Lincoln's Inn, Dec. 12 & 16, 1844.

### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### REMOVAL OF PAUPER LUNATICS UNDER 9 GEO. 4, C. 40, S. 38.

*By statute 9 Geo. 4, c. 40, s. 38, magistrates are empowered to make orders for the removal of insane paupers to the county lunatic asylum, and "if no such county lunatic asylum shall have been established, then to some public hospital, or some house duly licensed for the reception of insane persons."*

*Held, that under the provisions of this act, magistrates were not justified in making an order for the removal of an insane person from the county of Middlesex, to a private asylum in the county of Surrey, when there was a county lunatic asylum established in Middlesex, but in which county lunatic asylum it appeared, by the order of the magistrates, there was not room or accommodation for the pauper.*

At the general quarter sessions for the county of Middlesex, (May, 1844,) the following order was made under the stat. 9 Geo. 4, c. 40.

"Middlesex to wit.—Be it remembered, that at the general quarter sessions of the peace, holden by adjournment at, &c., on hearing an appeal in which the churchwardens and overseers of the poor of the parish of St. Luke, in the county of Middlesex are appellants, and C. A. H. Ellis, Esq., clerk of the peace of the said county, is respondent, against an order bearing date the 12th day of December 1843, under the hand and seal of J. T. Pratt, Esq., and J. Johnson, Esq., two of her Majesty's justices of the peace in and for the said county

\* *Davis v. Bush*, V. C. E., M. T., 1844.

of Middlesex, whereby the overseers of the poor of St. Margaret's Westminster, in the county aforesaid, were ordered to cause Harriett Ellis, an insane person, to be conveyed to a house duly licensed for insane persons in the county of Surrey, it appearing to the said justices, J. T. Pratt and J. Johnson, that there was not room or accommodation for the said Harriett Ellis in the county lunatic asylum, established at Hanwell, in the county of Middlesex; and against a certain other order bearing date, &c. under the hands and seals of the said J. T. Pratt and J. Johnson, justices as aforesaid, in and for the said county of Middlesex, whereby the said justices did adjudge the settlement of the said Harriett Ellis to be in the parish of St. Luke, in the county of Middlesex, and did order the overseers of the poor of the said parish of St. Luke to pay the sum of 6s. 6d., being the amount of the reasonable charges of conveying the said Harriett Ellis to the said licensed house, and also to pay to Peter Armstrong, the keeper of the said licensed house, the sum of 10s. per week, which payment the said P. Armstrong was willing to accept, and the same appeared to the said justices, J. T. Pratt and J. Johnson, to be a reasonable charge for maintenance, medicine, clothing and care of the said Harriett Ellis whilst confined therein; and on hearing counsel on both sides; It is ordered, that the several orders be quashed, subject to the opinion of the Court of Queen's Bench. If the Court of Queen's Bench should be of opinion that the said orders were, under the circumstances stated in the orders, legally made, then the said orders of justices are to stand affirmed, and the order of sessions to be quashed; otherwise the said order of justices to be quashed, and the order of sessions to be affirmed."

Mr. Prendergast now showed cause. This is an order for the removal of a pauper lunatic, under the stat. 9 Geo. 4, c. 40. The 38th sec. of that statute enables justices of the peace to make an order for the removal of insane persons to the county lunatic asylum, established, under the directions of this, or any former act, for the county, or district of united counties, for which or any of which they shall act; and if no such county lunatic asylum shall have been established, then to some public hospital, or to some house duly licensed for the reception of insane persons. Upon the face of this order it appears, that there was a county lunatic asylum in the county of Middlesex, and that that asylum was full. Under these circumstances the magistrates have thought fit to remove the pauper to a private asylum out of the county, which they had no authority to do. This is a case which has not been provided for by the legislature, and the magistrates must act strictly according to the power given them. The observations of the court in *Rex v. Chagford*,<sup>a</sup> are applicable to the present case. The powers of magistrates were there strictly confined to the cases specified by the act of parliament. There is another

objection to this order, which is, that the order for maintenance is made on a parish in Middlesex, where the settlement of the pauper is adjudged to be, yet the order removes him to an asylum in the county of Surrey. This seems contrary to the intention of the act, which would seem to confine the authority of the magistrates to the county in which they are acting.

Mr. Bodkin and Mr. Pashley, contra.

The court will always look to the object the legislature had in view in passing the act of parliament, *Rex v. Hall*.<sup>b</sup> The object in passing the stat. 9 Geo. 4, c. 40, may be collected from the preamble, which states that the act is to provide more effectually "for the care and maintenance of pauper and criminal lunatics in England." From the preamble as well as from the 38th and 41st sections, it may be inferred, that the intention of the legislature was to leave no case of pauper lunatics without provision. The 44th section extends the power of justices to insane persons who are found to be wandering about and dangerous, whether chargeable to a parish or not. The 45th section of the Poor Law Amendment Act, 4 & 5 W. 4, c. 76, expressly forbids the detention of lunatics in parish workhouses beyond a limited time. Great inconvenience therefore will often arise, unless an order like the present can be made. The proper construction of the 38th section is, that justices shall have the power to remove to a private asylum, when there is no county asylum established, or where there is a county lunatic asylum which is not capable of being made available for the reception of the insane person. The order in question may not come within the express words of the statute, but the court will not apply the same strictness of construction to remedial as to penal statutes. *Richardson v. Thomas*,<sup>c</sup> *Henderson v. Sherborne*,<sup>d</sup> *Edmund v. Lawley*.<sup>e</sup>

Lord Denman, C. J. I think the quarter sessions have done right in quashing the order of the justices, as the latter did that which the act did not empower them to do. The distinction that has been taken as to the construction of acts of parliament, does not admit of any argument whatever in this case, nor are the cases cited important. We should, in fact, be making a new enactment if we were to decide in the manner suggested to us. The magistrates are to cause the poor person to be conveyed to the county lunatic asylum, established under the directions of this or any former act for the county or district of united counties for which, or any of them, they shall act; and if no such county lunatic asylum shall have been established, then to some public hospital, or to some house duly licensed for the reception of insane persons. In this case the county lunatic asylum has actually been established, and the affirmative words are quite clear. It is not at all likely that, in a country like this, when

<sup>b</sup> 1 B. & C. 123.

<sup>c</sup> Adol. & Ellis, 575. <sup>d</sup> 2 M. & W. 239.

<sup>e</sup> 6 M. & W. 285.

<sup>a</sup> 4 B & Ald. 235.



once a county lunatic asylum has been established, it will ever cease to exist; we must, therefore, conclude that the legislature has made all the provisions which it thought necessary. It has been said, that unless the justices have power to make this order, the insane pauper must be supported in the parish workhouse; but we cannot on that account depart from the plain directions of the statute.

Mr. Justice *Williams*. I am of the same opinion. It has been suggested in argument, that the asylum is perfectly full, we must consider the case to be the same as if an asylum had not been established; the answer to that argument is, that no such provision has been introduced into the act. If a case like the present had been contemplated by the legislature, it would probably have been provided for by the act. The fact of the asylum being full is not practically the same as if there was no asylum at all.

Mr. Justice *Coleridge*. I am entirely of the same opinion. The object of the act was to provide asylums for pauper lunatics, and to give new powers for removing them out of the parishes when those asylums had been provided, and so get rid of the miserable parochial care that had been given in country parishes. Two cases were contemplated by the legislature: first, if there was a county asylum, the legislature assumed it to be sufficient; secondly, if there was not a county asylum, the lunatics were to be removed to some hospital or licensed house. Now, a third case is found to exist, where the county asylum is full; but then the inflexible rule arises, that persons acting under a special power must bring themselves within the terms giving the power, and so we must keep within the exact limits of the condition which the act of parliament imposes. Then what is the condition? That where no county lunatic asylum shall have been established, then the pauper may be sent elsewhere. Here, however, one did exist, and the justices therefore had no power to make the order before us.

Order of sessions confirmed.

*The Queen v. Ellis*. Queen's Bench, Michaelmas Term, 1844.

#### Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

CONTRACT.—GOODS BARGAINED AND SOLD.  
—DELIVERY.—RE-SALE.

*To enable a party to maintain an action for goods bargained and sold for a specific chattel, which he has purchased at an auction and resold, it is not necessary that there should have been a delivery of the chattel to him at the time of the contract of sale, but it is sufficient that there should have been a sale of it at a fixed price, so that he might have maintained trover for it on tendering the price.*

*Assumpsit for goods bargained and sold and for money paid.—Plea, non assumpsit.*

THE action was brought to recover 3*l.* 15*s.*, the price of a cast-iron surface-plate which the plaintiff had bought at an auction, and which he agreed to sell to the defendant in the sale-room, after it had been knocked down to him, but before he had paid the price. It was one of the conditions of sale, that each purchaser should pay the amount of his account before any lot should be removed. The defendant having afterwards refused to perform his contract, the present action was brought; and at the trial before the Secondary of London the plaintiff obtained a verdict. *Udall*, in the following term, moved for a nonsuit or a new trial, on the ground that the plaintiff had not, at the time of the bargain, a sufficient property in the surface-plate to make a valid contract for the sale of it, and a rule nisi was granted.

*Lush* showed cause.—The question is, whether the plaintiff was in a situation to make a valid contract for the sale of the article in question: and it is submitted that he was. The property in specific chattels passes by a contract of sale to a vendor without delivery. *Dizon v. Yates*.<sup>a</sup> It is said that the plaintiff could not make such a contract because the auctioneer had a lien for the price. But that doctrine is untenable. If it could be supported, the owner of a parcel of wines in the London Docks would be unable to contract for the sale of them, because he might not have paid the dock dues. It must be borne in mind that this is not a contract within the Statute of Frauds. The property in specific goods passes by the bargain. And when there is a contract for the sale of such goods, and everything has been done to vest the property in the buyer, and enable him to maintain trover on tendering the price, he is entitled to bring this form of action. That is the distinction taken in *Atkinson v. Bell*,<sup>b</sup> where it was held that this action would not lie, because the goods which were the subject of the action were not ascertained. By the contract, the general property in the goods is in the buyer, and they remain at his risk in case of accident; *Hind v. Whitehouse*.<sup>c</sup> It was held in that case that at common law there was a sale to change the property at the time and place of auction, though the goods (sugars in the king's warehouse) could not be delivered till the duties were paid, which was known at the time, and that the sugars having been destroyed by fire, the loss must fall upon the buyer. That case is an authority to show that by a contract for the sale of specific goods the property in them is changed, notwithstanding the seller has a lien for the price. The plaintiff had the power at the moment of sale to comply with the condition of sale and remove the article. The auctioneer had nothing but a lien, a mere right to hold the chattel, but no property in it.

<sup>a</sup> 5 B. & Ad. 340.

<sup>b</sup> 8 B. & C. 277.

<sup>c</sup> 7 East, 558.

*Patteson, J.*—They do not go the length of saying that the contract itself was an invalid contract; but it is said the form of action is not the right one.

*Lush.*—This is the correct form of action as tried by the test proposed in *Hind v. Whitehouse*, namely, whether or not the goods pass by the bargain.

*Udall*, in support of the rule.—An action for goods bargained and sold cannot be maintained unless the plaintiff transfer to the vendor an immediate right to maintain trover against any party detaining them. This results from the foundation of the decision in *Atkinson v. Bell*. No such right was conferred upon the buyer in the present case. This was not a contract for the sale and immediate delivery of a chattel. In *Hind v. Whitehouse*, relied upon on the other side, the decision turned upon the peculiar nature of the conditions of sale. In *Simmons v. Swift*,<sup>a</sup> where the contract was to sell a stack of bark at a certain price per ton, and a part was weighed and delivered, it was held that the property in the residue did not vest in the purchaser until the weighing had taken place. The principle laid down there is, that if anything remains to be done on the part of the seller, the property is not changed; and it is there said, that notwithstanding the property in a thing may have passed, yet the buyer may not be in a situation to bring goods bargained and sold for the price of it. In *Blowam v. Sanders*,<sup>c</sup> *Bayley, J.*, says: "Where goods are sold, and nothing is said as to the time of the delivery or the time of payment, and everything the seller has to do with them is complete, the property vests in the buyer, so as to subject him to the risk of any accident which may happen to the goods, and the seller is liable to deliver them whenever they are demanded, upon payment of the price; but the buyer has no right to have possession of the goods till he pays the price. The buyer's right in respect of the price is not a mere lien which he will forfeit if he parts with the possession, but grows out of his original ownership and dominion; and payment, or a tender of the price, is a condition precedent on the buyer's part." The absolute property must pass by the contract. Now, whatever right the plaintiff may have obtained by the contract against the auctioneer, he had not perfected his title to resell the goods. 2ndly. The property in this chattel did not pass, because it was a ready-money contract. Where payment of the price is to be an act concurrent with the delivery of the thing, the buyer has no right of property in it until the price is paid. *Tempest v. Fitzgerald*.<sup>d</sup> He also cited *Alexander v. Gardner*,<sup>e</sup> *Elliott v. Pybus*,<sup>f</sup> and *Craven v. Ryder*.<sup>g</sup>

*Patteson, J.*—No doubt an action for goods bargained and sold would have lain at the suit of the original seller against the present plaintiff; but it is said here that the latter was not

in a condition to maintain that action, because he had not clothed himself with the right of possession by paying the price. I have not much doubt upon the subject, but I will refer to the authorities.

*Cur. adv. vult.*

*Patteson, J.*, on a subsequent day.—I am of opinion that this rule must be discharged. All that is necessary to enable a party to maintain an action for goods bargained and sold is, that there should have been a sale of specific goods to him at a fixed price, so that on payment or tender of the price he may maintain an action of trover in the event of their detention. The case of *Atkinson v. Bell*, which was cited, is not applicable, as there the particular goods the subject of the action were not appropriated. The cases of *Dixon v. Yates*, and *Simmons v. Swift*, are also distinguishable. In the former, the right of possession was defeated by a subsequent insolvency; and in the latter, there remained something to be done by the seller, and consequently the property was not changed. In the present case, it is not doubted that the action for goods bargained and sold would have lain against the plaintiff by the original owner. By the sale of the goods to the defendant the plaintiff passed to him the same right of property in the goods, and the right of possession of them, on payment of the price; and there is no reason why he should not be at liberty to maintain the same action against the defendant, to which he would have been liable at the suit of the original seller.

Rule discharged.

*Scott v. England.* Q. B. P. C. M. T., 1844.

### Eschequer.

[Reported by A. P. HURLESTONE, Esq., Barrister at Law.]

*Though the 7 & 8 Vict. c. 96, s. 57, enacts that no person shall be taken in execution on any judgment in an action wherein the sum recovered shall not exceed 20l. exclusive of costs, yet it seems, that an action may be brought upon that judgment, and the defendant taken in execution thereon, if the debt with costs exceeds 20l.*

AN action having been commenced to recover the sum of 15*l.*, the defendant consented to a judge's order for payment of debt and costs by instalments, and in default of payment the plaintiff to be at liberty to sign final judgment, and issue execution. Some instalments were paid, but the defendant having afterwards made default, the plaintiff signed final judgment for the remainder of the debt and costs, which amounted to 29*l.* 3*s.* 4*d.* The plaintiff then commenced an action on the judgment.

*Pearson* moved for a rule, calling on the plaintiff to show cause why proceedings should not be stayed. He submitted that this was an attempt to evade the provisions of the 7 & 8 Vict. c. 96, s. 57, which enacts, that "after the

<sup>a</sup> 5 B. & C. 857.

<sup>c</sup> 4 B. & C. 948.

<sup>f</sup> 3 B. & Al. 680.

<sup>e</sup> 1 Bing. N. C. 671.

<sup>g</sup> 10 Bing. 512.

<sup>d</sup> Holt, 100.

passing of that act, no person shall be taken in execution upon any judgment in any action for the recovery of any debt, wherein the sum recovered shall not exceed the sum of 20*l.*, exclusive of costs, recovered by such judgment." In *Williams v. Thracher*, 1 Brod. & Bing. 514, proceedings on a bail bond were set aside on the ground that it was given in a second action for the same cause, although the first action was non-prossed. The court there said, that "a second action for the same cause must always be deemed vexatious, unless the contrary is shown."

*Per curiam*.—We have clearly no authority to deprive the plaintiff of his right of action; even if the defendant were taken in execution, we cannot say that he would be entitled to relief. The recent act does not appear to have made any provision for a case like this.

Rule refused.

*Hopkins v. Freeman*. Exchequer, M. T., Nov. 11, 1844.

#### ATTORNEY.—TAXATION.—INSOLVENT DEBTORS' COURT.

*The Court for the Relief of Insolvent Debtors has no power to tax an attorney's bill for business done in that court.*

THE declaration stated, that before and at the time of the making of the promise herein-after mentioned, one Brown was a prisoner for debt in Maidstone Gaol, and was about to petition the Court for the Relief of Insolvent Debtors to be discharged from such imprisonment; that the plaintiff was and is an attorney of the said court; and thereupon, in consideration that the plaintiff, at the request of the defendant, would put in bail and conduct all necessary proceedings for procuring the discharge of Brown, the defendant promised the plaintiff to pay him his taxed costs as such attorney. Averment, that the plaintiff put in bail and conducted all necessary proceedings for the discharge of Brown. And although Brown was, by the proceedings so taken by the plaintiff, discharged from such imprisonment, and although the costs of the plaintiff were taxed by the Court for the Relief of Insolvent Debtors at the sum of 30*l.* 17*s.*, yet neither the defendant nor Brown have paid the said sum or any part thereof. Plea, that these costs were not taxed at the instance of Brown or of the defendant, nor had they any notice thereof. Replication, that by the rules of the Insolvent Court no notice was necessary. There was a special demurrer to the replication; and in addition, the plaintiff objected to the declaration.

*Flood*, in support of the demurrer.—The promise alleged in the declaration is, to pay taxed costs. The taxation of the costs is, therefore, a condition precedent to the maintenance of the action. The declaration avers that the costs were taxed by the Court for the Relief of Insolvent Debtors; but that court has no power to tax costs. The 27th section of the

1 & 2 Vic. c. 110, expressly provides that the Insolvent Court shall not award costs except in the cases mentioned in the 82nd, 87th, and 90th sections, which have no application to this case.

*Gurney*, contra.—There is a taxing officer duly appointed by the Insolvent Court. [*Parke*, B.—We have no judicial knowledge of any such officer; under the late act, an attorney's bill must be taxed by an officer of the superior courts.] In a case like the present such a practice would lead to great inconvenience, as an officer of the superior courts could hardly have a proper acquaintance with the practice of the Insolvent Court.

*Per curiam*.—Taxed costs mean, *primd facie*, costs taxed by the proper officer. A Master of the superior courts would have no difficulty in ascertaining what was due. The plaintiff may amend, otherwise there must be judgment for the defendant.

*Morgan v. West*. Exchequer. Michaelmas Term, 13 Nov. 1844.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From Dec. 24th, 1844, to Jan. 17th, 1845, both inclusive, with dates when gazetted.

Baker, Thomas, Abergavenny, Monmouth. Dec. 24.  
Burbeary, James Pashley, Sheffield, York. Jan. 10.  
Chalk, Charles, Brighton, Sussex. Jan. 10.  
Drinkall, Robert, jun., Howden, York. Dec. 24.  
Norris, William, Newport, Isle of Wight. Dec. 31.  
Sharland, George Edward, Gravesend, Kent. Jan. 3.  
Simpson, Thomas, Yarm, Norfolk. Jan. 7.

#### DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.

From Dec. 24th, 1844, to Jan. 17th, 1845, both inclusive, with dates when gazetted.

Casson, William, and George Bancroft Withington, Attorneys, Solicitors, and Conveyancers, Manchester. Jan. 7.  
Clarkson, Ebenezer, Thomas and Edwin Eugene Whitaker, Calne, Wilts, Attorneys, Solicitors, and Conveyancers. Jan. 7.  
Edleston, Richard Chambers, Henry Fisher, and Robert Chambers Edleston, Attorneys and Solicitors, Nantwich, Chester. Jan. 7.  
Gathiff, Ayrton, and Edwin Chorley Hopps, Attorneys and Solicitors, Leeds. Jan. 10.  
Gresham, William, and John Leete, Attorneys and Solicitors. Dec. 31.  
Jackson, Ralph Ward, and John Bury, jun., Attorneys, Solicitors, and Conveyancers, Stockton-on-Tees, Durham. Jan. 3.  
Neal, Samuel, and John Castle Gant, Attorneys, Solicitors, and Conveyancers, 5, Austin Friars. Jan. 3.  
Neville, James, James Ainsworth, and John Beardsworth, Blackburn, Lancaster, Attorneys and Solicitors. Jan. 7.

**Pass, William**, and **John Shelmerdine**, Attorneys, Solicitors, and Conveyancers, Altrincham, Chester. Jan. 7.

**Phillipot, John**, and **John Phillipot, jun.**, Attorneys and Solicitors, Southampton Street, Bloomsbury. Jan. 17.

**Tilley, Edwin**, and **Henry Bowden Were**, Moreton-in-Marsh, Gloucester, Attorneys and Solicitors. Jan. 10.

**Wallace, Thomas Edward**, and **George Frederick Browne, Dias**, Norfolk, Attorneys and Solicitors. Dec. 24.

**White, Harry**, and **Robert Beales Bass**, Attorneys and Solicitors, Haleworth, Suffolk. Jan. 7.

## BANKRUPTCIES SUPERSEDED.

From Dec. 24th, 1844, to Jan. 17th, 1845, both inclusive, with dates when gazetted.

**Craven, Joseph, John Hardman**, and **George Craven**, Holme Dye Works, Wakefield. Dec. 24 and 27.

**Hammond, Samuel**, the younger, Upminster, Essex, Market Gardener. Jan. 17.

**Harvey, Joseph**, 1, St. Mary Axe, London, Builder and Undertaker. Jan. 14.

**Humble, John**, Oaset, near Wakefield, Chemist. Dec. 24.

**Tapscott, John**, late of Winehead, Somerset, Baker. Jan. 7.

**White, John Cooper**, Canterbury, Kent, Draper. Dec. 31.

## BANKRUPTS.

From Dec. 24th, 1844, to Jan. 17th, 1845, both inclusive, with dates when gazetted.

**Aldred, William**, 3, George Street, New Kent Road, Builder. *Turquand*, Off. Ass.; *Beart*, Bouverie Street, Fleet Street. Jan. 17.

**Armani, Antonio Nicholas**, 3, Scott's Yard, Bush Lane, Merchant. *Johnson*, Off. Ass.; *Crofts*, Scott's Yard, Bush Lane. Jan. 17.

**Barff, John**, Liverpool, Merchant and Broker. *Morgan*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Mess*, Dale Street, Liverpool. Jan. 7.

**Bartlett, George**, Wellington Street, Goswell Street, Middlesex, Manufacturer of Plaster and Cement Ornaments. *Johnson*, Off. Ass.; *Oriel*, Alfred Place, Bedford Square. Dec. 31.

**Birley, John Peart**, 26, Brompton Row, Brompton, Painter and Glazier. *Whitmore*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. Dec. 24.

**Blake, John**, Ballast Hill, Sunderland, Hardwareman and Edge Tool Manufacturer. *Wakley*, Off. Ass.; *Price & Co.*, Wolverhampton; *Moore*, 7, Bridge Street, Bishopwearmouth; *Bower & Co.*, 46, Chancery Lane. Jan. 14.

**Booth, James**, Brownhill, Cartworth, Kirkburton, York, Woollen Cloth Manufacturer. *Fearns*, Off. Ass.; *Sudlow & Co.*, Chancery Lane; *Floyd & Co.*, or *Battys & Co.*, Huddersfield. Jan. 7.

**Braston, Richard**, Sen., Shrewsbury, Cabinet Maker and Furniture Broker. *Christie*, Off. Ass.; *Motteram & Co.*, Bennet's Hill, Birmingham; *Parkes & Co.*, Bedford Row. Jan. 14.

**Brennall, Elijah**, Elizabeth Cottage, Cold Harbour Road, North Brixton, Surrey, Builder. *Pennell*, Off. Ass.; *Jenkinson*, Cannon Street. Dec. 24.

**Brideson, Arthur**, Clare Street, Clare Market,

**Cheesemonger**. *Graham*, Off. Ass.; *Perring & Co.*, Lawrence Pountney Place. Jan. 14.

**Brown, Joseph**, Regent Street, St. John's, Westminster, Grocer and Cheesemonger. *Whitmore*, Off. Ass.; *Baylis*, Basinghall Street. Jan. 10.

**Browning, Thomas**, New Inn, Old Bailey, Lun-keeper and Victualler. *Bell*, Off. Ass.; *Lambe*, Bucklersbury. Jan. 17.

**Burdett, John Peach**, (now or late of Uttoxeter,) Stafford, Grocer. *Bittleston*, Off. Ass.; *Walby & Co.*, Uttoxeter; *James*, Waterloo Street, Birmingham. Dec. 24.

**Burford, Thomas William**, Brydges Street, Covent Garden, Victualler. *Edwards*, Off. Ass.; *Henderson*, 28, Mansell Street, Goodman's Fields. Dec. 31.

**Chandler, Thomas**, Bow Lane, Builder. *Green*, Off. Ass.; *Farrar & Co.*, 12, Godliman Street, Doctors' Commons. Jan. 7.

**Christie, John**, and **James Rodgers**, Nottinghill, Middlesex, Stone Masons. *Alager*, Off. Ass.; *Richardson & Co.*, Golden Square. Dec. 24.

**Cronach, Michael**, and **Marx Hirschmann**, Size Lane, Merchants. *Johnson*, Off. Ass.; *Linklater*, Leadenhall Street. Jan. 14.

**Curwen, John**, Bridge Place, Vauxhall, Cheesemonger. *Alager*, Off. Ass.; *Dean & Co.*, St. Swithin's Lane. Jan. 14.

**Dickinson, George**, 5, South Portman Mews, Portman Square, Farrier and Blacksmith. *Groom*, Off. Ass.; *Buchanan & Co.*, 8, Basinghall Street, City. Jan. 17.

**Donald, Andrew**, St. Peter's Street, St. Albans, Hertford, Lodging Housekeeper and Bookseller. *Bell*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. Jan. 17.

**Dudley, Frederick**, Rochford, Essex, Builder. *Green*, Off. Ass.; *Turner & Co.*, 8, Basing Lane, Bread Street. Dec. 31.

**Eldridge, Ralph**, Bletchingly, Surrey, Innkeeper. *Johnson*, Off. Ass.; *Russell & Co.*, 82, High Street, Southwark. Dec. 31.

**Findlay, Emily Sarah Ann**, 4, Grafton Street, Fitzroy Square, Milliner and Dressmaker, (trading under the name of Madame de Souza). *Groom*, Off. Ass.; *Roberts*, 17, Spring Gardens, Whitehall. Dec. 31.

**Flintoff, George**, Plymouth, Bookseller and Stationer. *Bell*, Off. Ass.; *Surr*, Lombard Street. Jan. 10.

**Gould, William Ellis**, Finsbury Place, South, Carver and Gilder. *Belcher*, Off. Ass.; *Venning & Co.*, Tokenhouse Yard. Dec. 31.

**Graham, Michael**, (late of Middlesbrough, York, Shipowner,) but now of Darlington, Durham, Attorney. *Hops*, Off. Ass.; *Rushworth & Co.*, Staple Inn, London; *Sanderson*, Leeds. Dec. 24.

**Greenhow, Conrad**, Haverkane, North Shields, Ship and Insurance Broker. *Wakley*, Off. Ass.; *Henry & Co.*, North Shields; *Daw & Co.*, St. Swithin's Lane. Jan. 14.

**Harley, Joseph**, Wolverhampton, Glazier and Painter. *Whitmore*, Off. Ass.; *Harrison & Co.*, Edmund Street, Birmingham; *Clarke*, Wolverhampton. Dec. 24.

**Hawke, Nicholas**, Trevenan, Pensance, Cornwall, Tea Dealer and Grocer. *Hertzel*, Off. Ass.; *Hill & Co.*, St. Mary Axe; *Terrell*, St. Martin's, Exeter. Dec. 24.

**Higgins, Henry**, Leeds, Merchant. *Freeman*, Off. Ass.; *Atkinson & Co.*, or *Blackburn*, Leeds; *Hawkins & Co.*, New Boswell Court, Carey St. Dec. 24.

- Joplin, Thomas, Sunderland, Linen and Woollen Draper, *Baker*, Off. Ass.; *Hartley*, 6, Southampton Street, Bloomsbury; *Brigial*, Durham. Jan. 14.
- King, Joseph Raymond, Bath, Druggist. *Acraman*, Off. Ass.; *Mangford*, Bath. Dec. 27.
- Lanham, George Edward, Southampton, Builder. *Whitmore*, Off. Ass.; *Jones & Co.*, John Street, Bedford Row. Jan. 3.
- Lewis, Charles, Bath, Innkeeper and Victualler. *Miller*, Off. Ass.; *Cruicell & Co.*, Bath. Jan. 14.
- Lutwyche, William, Birmingham, Brass Founder. *Valpy*, Off. Ass.; *Harrison & Co.*, Edmund St., Birmingham. Jan. 7.
- Mandeno, John, Grove Street, Hackney, Gardener. *Groom*, Off. Ass.; *Jenkinson*, 76, Cannon St., City. Jan. 7.
- Moyes, William, and Thomas Moring, 31, Camomile Street, London, Carmen. *Green*, Off. Ass.; *Hilleary & Co.*, Fenchurch Street. Jan. 14.
- Newbold, John, Nottingham, Tailor, Draper and Hatter. *Bittleston*, Off. Ass.; *Bowley*, Nottingham; *Harrison & Co.*, 8, Edmund Street, Birmingham. Jan. 3.
- Padbury, Andrew, jun., Epsom, Surrey, Grocer. *Graham*, Off. Ass.; *Cattlin*, Ely Place. Jan. 3.
- Palmer, Benjamin Wymont, Daventry, Northampton, Wine and Brandy Merchant. *Follett*, Off. Ass.; *Wimburn & Co.*, Chancery Lane; *Gery*, Daventry. Jan. 3.
- Preston, William, 4, Monmouth Road, Westbourne Grove, Baywater, Builder. *Groom*, Off. Ass.; *Hooker*, 8, Bartlett's Buildings, Holborn. Dec. 24.
- Revely, Thomas, jun., Newcastle-upon-Tyne; Plumber and Brass Founder. *Baker*, Off. Ass.; *Harle*, 2, Butcher Bank, Newcastle-upon-Tyne; *Chisholme & Co.*, 64, Lincoln's Inn Fields. Jan. 7.
- Robertson, William, (late of Eagle Coffee House, Eagle Terrace, City Road), Coffee Shopkeeper. *Follett*, Off. Ass.; *Buchanan & Co.*, 8, Basinghall Street, City. Jan. 17.
- Seed, Ann, Liverpool, Victualler. *Cazenove*, Off. Ass.; *Wilkie*, Farnival's Inn; *Wardle*, Liverpool. Dec. 27.
- Steadman, John, 20, Hayfield Place, Mile End Road, Engineer and Smith. *Edwards*, Off. Ass.; *Morris & Co.*, Moorgate Street Chambers, Moorgate Street. Jan. 14.
- Strange, Charles, Baglan, near Neath, Glamorgan, Gentleman, and Robert Parsons, (now of Swansea, late of the said parish of Baglan), Merchants and Coal Proprietors. *Hutton*, Off. Ass.; *Weymouth & Co.*, Angel Court. Dec. 27.
- Stutchbury, Henry Rome, 47, Theobald's Row, Bedford Row, Bookseller and Dealer in Curiosities. *Groom*, Off. Ass.; *Webber*, 3, Caroline Street, Bedford Square. Jan. 17.
- Taylor, John, 14, Market Street, May Fair, Carpenter and Upholsterer. *Graham*, Off. Ass.; *Kirk*, Symond's Inn. Dec. 31.
- Themens, Levi Israel, 4, Sydney Place, Commercial Road, Tea Dealer. *Alsager*, Off. Ass.; *Benan*, Old Jewry. Dec. 27.
- Todman, Joseph George, 91, Gray's Inn Lane, Victualler. *Edwards*, Off. Ass.; *Dimes*, 26, Broad Street, Cheapside. Jan. 17.
- Tydemans, William, Chelmsford, Essex, Timber and Coal Merchant. *Belcher*, Off. Ass.; *Hooker*, 8, Bartlett's Buildings, Holborn. Jan. 14.
- Vallance, William, King Street, Liverpool, Merchant. *Bird*, Off. Ass.; *Gilbank*, Coleman Street; *Lowndes & Co.*, Liverpool. Jan. 10.
- Vandeau, Louis Jean Baptiste, and Louis Onexime Benjamin Vandeau, 104, Wood Street, Cheapside, Dealers in Artificial Flowers. *Whitmore*, Off. Ass.; *Hodgson & Co.*, Salisbury Street, Strand. Jan. 14.
- Waller, Henry May, Foulsham, Norfolk, Merchant and Tailor. *Edwards*, Off. Ass.; *Flower*, 61, Broad Street, Cheapside; *Taylor & Co.*, Norwich. Dec. 24.
- Ward, James, Manchester, Engineer and Iron Founder. *Pott*, Off. Ass.; *Wathen*, 28, St. Swithin's Lane; *Johann*, Manchester. Jan. 3.
- Warman, Charles Frederick, 9, Hounsditch, China and Glass Dealer. *Fennell*, Off. Ass.; *Heath*, 33, Gracechurch Street. Jan. 14.
- Watson, Christopher, jun., Church Street, Darlington, Durham, Tea Dealer. *Wakley*, Off. Ass.; *James & Co.*, or *Richardson & Co.*, Leeds. Dec. 27.
- Weightman, John, Grand Junction Wharf, Cotton End, Northampton, Wharfinger and Sawyer. *Pennell*, Off. Ass.; *Weller*, 8, King's Road, Gray's Inn; *Pell*, jun., Northampton. Jan. 3.
- Withers, Thomas Richard, Rumbidge, Eling, Southampton, Brewer. *Edwards*, Off. Ass.; *Sewton*, 27, Great James Street, Bedford Row; *Carroll & Co.*, Southampton. Jan. 17.
- Wood, John Walker, Churton Street, Vauxhall Bridge Road, (late of Mount Sorrel, Berrow, Leicester), Wine Merchant and Quarryman. *Turquand*, Off. Ass.; *Motteram*, Birmingham; *Parkes & Co.*, Bedford Row. Dec. 24.
- Woodhead, John, Todmorden, York, Clogger and Shoe Dealer. *Young*, Off. Ass.; *Wigglesworth & Co.*, Gray's Inn; *Berwick*, Leeds. Jan. 3.
- Yallop, James Pell, Durham Street, Hackney Road, (and of Pritchard's Place, Hackney), Carpenter and Builder. *Follett*, Off. Ass.; *Norton & Co.*, New Street, Bishopsgate. Jan. 14.
- Youle, William, 19, Adde Street, Wood Street, Commission Agent. *Alsager*, Off. Ass.; *Langley*, 45, Bedford Row. Jan. 7.

## THE EDITOR'S LETTER BOX.

THE case referred to by Sir James Wigram, in the case of *Hanson v. Keating*, (L. O., No. 878, p. 192), namely, *Ayabey v. Hartwell*, decided in the House of Lords, and mentioned by him as being unreported, is to be found in 5 Cl. and Finn. 484, under the name of *Cabin v. Hartwell*.

The letters on "Short Deeds" and Loan Societies, are acceptable.

The list of candidates passed will be given in an early number.

Several communications, for which we are obliged, will appear in our next number.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 1, 1845.

—“ Quod magis ad nos  
Pertinet, et nosse malum est, agimus.”

HORAT.

### THE CERTIFICATE DUTY OF ATTORNEYS AND SOLICITORS.

We are induced, at the near approach of the session of parliament, to call the attention of all whom it may concern to the unequal and unjust tax levied annually on attorneys and solicitors. For now upwards of fourteen years we have never ceased, when the slightest favourable opportunity offered, to denounce this impost, and demand its repeal. Having every just principle on our side, we feel confident of ultimate success. Before reverting to the objectionable nature of the tax, we would first notice its injurious effect on the administration of justice, and the frauds and evasions to which it gives rise.

We have heard some persons erroneously contend that this annual burthen operates as a check on needy and unprincipled practitioners, and renders the profession more respectable than otherwise it would be. This is a most fallacious and unjust view of the matter. It is fallacious, because unprincipled persons are not thereby deterred from practising, for they compensate themselves by extortionate charges; and in many instances several irregular practitioners combine together to pay the duty, in the shape of an annual allowance for the use of the attorney's name. Thus the administration of justice is abused and perverted.

The objection is also unjust, as well as fallacious, in ascribing dishonest motives to all whose narrow circumstances render

the tax a heavy one. We are satisfied that there are many highly honourable, though unsuccessful, members of the profession. We believe that there is a large number of men who make only a hundred or two a year; and that the average income of the whole body of attorneys does not annually exceed 300*l.* each. Many, no doubt, have means exclusive of their professional income, and thus keep up the respectability of their station, but to a very large proportion the tax amounts from six to twelve per cent. on their profits. Supposing the tax were unobjectionable in principle, it is thus excessively oppressive, and ought to be reduced.

The impost, however, is altogether unjust. It is not levied on other professions. The clergy, the faculty, the army, the navy, are not subjected to a poll-tax; and it is contrary to all sound principles of taxation to single out one particular class of the community and make its members pay a large annual sum to entitle them to pursue their lawful calling. It is unnecessary to enlarge on this topic.

It is also an *unequal* tax as applicable to the legal profession. It is not paid by the bar; and in regard to the attorneys themselves, the same amount only is paid by the man of three or four thousand a year as the man of a single hundred or less. We cannot conceive, if the iniquitous nature of the tax were sufficiently understood, that it could be permitted to endure. The explanation of its lengthened existence consists in the favour with which every attack upon lawyers is received. They are deemed fair game for every witting; and a tax upon those who are erroneously

supposed to derive enormous gains, has always been a popular one. It requires strenuous efforts to counteract this injustice, and we recommend not only the various law societies, but the individual members of the profession at large, to bestir themselves.

We think, also, that it is the interest and the duty of every member of the bar, and especially those who are in parliament, to assist in effecting a repeal of the tax. If both branches of the profession were united on the subject, they must prevail. As a partial and unequal burthen on the practitioners of the law, it constitutes in fact a tax upon justice.

We understand that the "Metropolitan and Provincial Legal Association" has prepared a petition for the signature of attorneys and solicitors, praying for the repeal of the certificate duty. It states the case much to the same effect as the petition of the Incorporated Law Society, in 1836, and of the Lincolnshire Law Society, which we recently printed. We are glad to see new labourers in this field of difficulty; and as some of the statements are partly varied, we deem it useful to place them before our readers:—

That, by an act of parliament passed in the 55th year of the reign of his late Majesty King George the Third, c. 184, the following annual duties were imposed upon every attorney, solicitor, and proctor:—

On those practising within the limits of the twopenny post, who have been admitted for three years or upwards	£12
On those not admitted so long	6
On those residing elsewhere, who have been admitted three years	8
On those not admitted so long	4

That by the same act a stamp duty of 120*l.* is also charged upon all articles of clerkship to an attorney, solicitor, or proctor, and a further duty of 25*l.* upon his admission, and which, with the fees paid the officers of the different courts thereon, amount in the whole to the sum of 150*l.*

That the duty on articles of clerkship and admissions affords of itself a large revenue, which, with the certificate duty, is exclusively levied on your petitioners, no other profession, nor even the higher branch of your petitioners' profession, being burthened with a similar tax.

That the duties on articles of clerkship, on an average of the ten years ending July 1835, since which time no return has been made, amounted annually to 260,960 and on admissions, to 8,330

That your petitioners do not complain of the duty on articles of clerkship, because it tends in their judgment to maintain the respectability

of the profession, but the certificate duty was imposed by the parliament of 1793 as a war tax, objectionable in principle, but rendered necessary by the exigencies of the time; that it was not even proposed by the minister of the day, but was a suggestion of an individual member of parliament, to relieve the government from the unpopularity of imposing a tax upon shopkeepers and servants.

That the amount, then fixed at 5*l.*, has been more than doubled by the subsequent act of parliament.

That your petitioners' profession is the only profession or trade in which an individual is restrained by law from estimating the value of his own time and services.

That the certificate duty was originally imposed, and subsequently increased, on the assumption that the profits of a professional man were sufficiently ample to justify the imposition of a personal and extraordinary tax; such principle of taxation is manifestly unsound, but if the fact were so, the alterations made in the practice of the law by successive governments have now reduced the emoluments of an attorney even below the limits of a fair remuneration for his services and responsibilities.

That your petitioners pay their equal share of all the taxes imposed on the community at large, and feel particularly that the certificate duty peculiarly levied on their branch of the profession is not founded on any just principle, but is a personal and partial tax.

With regard to the signatures to petitions, a correspondent, G. G., suggests that persons whose signatures are required should be called on, instead of expecting them to go out of their way, (which busy men are not likely to do,) for the purpose of volunteering their support.

## PRACTICAL POINTS OF GENERAL INTEREST.

### PROCHEIN AMY.

IN *Watson v. Frazer*, 9 Dowl. 741, 8 M. & W. 668, Parke, B., says: "It is entirely in the discretion of the court to appoint a proper person to be prochein amy. The object is, to protect the rights of the infant; and I by no means wish to lay down a general rule, that it is any objection to a prochein amy that he is poor, but in this case there has been a sort of imposition practised on the court in procuring the appointment of an improper person. The father is the proper person, who is naturally entitled to take care of an infant; but instead of him, a person is brought forward who is incapable of holding any property whatever." In a subsequent case, *Pollock*, C. B., held, that

"in cases of this kind the conflict is between the hardship to the defendant, on the one hand, and a denial of justice to the plaintiff, on the other. There may be circumstances of such a nature that an infant plaintiff can get no other person as prochein amy but his father, and perhaps his father has become insolvent. But the particular facts should be before the judge, who should exercise his discretion." *Duckett v. Satchwell*, 1 Dowl. & L. 980.

#### HUSBAND AND WIFE.

In *Miles v. Williams*, 1 P. Wms. 249, the question was, whether the husband, who had become bankrupt, could be afterwards sued, conjointly with his wife, for a debt due from the wife before her marriage, and the judgment of the court was, that such an action could not be maintained. But the authority of *Miles v. Williams*, upon points incidentally discussed therein, must be considered to be very much shaken by what Lord Hardwicke said in *Ex parte Coysegame*, 1 Atk. 192, which denied some of the positions mainly relied upon in the judgment to be law. Per *Tindal*, C. J., 1 Dowl. & L. 1040. It is clear, from *Gaters v. Madeley*, 6 M. & W. 423, that a promissory note given to the wife before her marriage is a chose in action, which the husband may reduce into possession, if he think fit, by bringing an action thereon in the name of himself and his wife, but which, if not so reduced into possession, will survive to the wife.

On a full consideration of these and other cases, it has been held by the Exchequer Chamber, that the assignees of a bankrupt cannot sue alone on a promissory note given to the bankrupt's wife before marriage, payable to her order. *Sherrington v. Yates*, 1 Dowl. & L. 1032.

#### NON-ATTENDANCE OF COUNSEL.

WE perceive that a considerable controversy is going on regarding the non-attendance of counsel in causes in which they have accepted briefs. It is to be observed, that this never occurs now in the Courts of Equity, as the leaders have there, as a general rule, confined themselves to one court, which is of great service to the judge, the solicitor, and the suitor. Various plans have been suggested as to obtaining the same benefit at common law. We

doubt the success of any course which shall not proceed from the bar itself. But we do strongly submit, that the bar ought to take the proper steps. It is said, that the attorney is to blame in overburdening gentlemen with briefs, and leaving many others unemployed. The bar, it is hinted, "is all before them where to choose," but the well-known leaders are in many cases insisted on by the client, and if they were not so, an attorney cannot have much choice. The real remedy is in the hands of the bar.

#### JUDICIAL APPOINTMENTS.— NEW QUEEN'S COUNSEL.

Mr. Platt has been appointed to the vacancy in the Exchequer, and Mr. Shepherd, Q. C., to the vacant Commissionership of Bankrupts. By the elevation of the latter gentleman, a pension of 1,200*l.* a year as compensation for the clerkship of the custodies, which was paid out of the Suitors' Fund, is saved. Mr. Shepherd was also counsel to the Admiralty.

THERE are to be several new Queen's Counsel appointed, but the complete list is not determined. The statement in the newspapers is imperfect to say the least of it.

#### BARRISTERS SERVING ARTICLES OF CLERKSHIP TO ATTORNEYS.

THERE have been many instances of attorneys retiring from their practice and being called to the bar. In some cases great success has followed the change, but in others the parties have had too much reason to regret the indulgence of their ambition. A few, and but a few, examples have occurred of gentlemen of the bar quitting that higher branch of the profession and becoming attorneys. This has happened in the only two reported cases (though we believe there are others) in which the parties had previously served their articles of clerkship, and been admitted as attorneys, and after ceasing to practise, had been called to the bar. These, at their own request, were disbarred, and re-admitted as attorneys.

In a case which has just occurred, a



gentleman was originally articled to an attorney in 1826, and served 3 years. He then went to Cambridge, graduated there, then entered as a member of the Middle Temple, and was called to the bar in 1835, and practised for 8 years. In 1843, *without being disbarred*, he entered into new articles to an attorney for 5 years, under a proviso that the term should cease at the end of 2 years, if the court should deem that service, joined to the former 3 years, sufficient. The party had only procured the benchers' permission to be disbarred a few days before the examination.

The examiners considered the case so novel in its kind, and involving such an important principle to both branches of the profession, — an attorney being precluded from a call to the bar until he has ceased to practise for 2 years, — that they declined to proceed beyond a conditional examination, without the direction of the court.

On Wednesday last the argument came on; and after hearing the *Solicitor-General* and Mr. F. Robinson, on behalf of the Incorporated Law Society, and Mr. Knowles for the applicant, the court, consisting of Lord Denman, Mr. Justice Patteson, and Mr. Justice Coleridge, decided against the application, on the ground that a barrister cannot properly serve a clerkship to an attorney.

We shall be enabled, from the shorthand writer's notes, to give a full report of this case, which, from its importance, will no doubt be acceptable to all our readers.

In the mean time, we extract the substance of Lord Denman's judgment, as given in *The Times* of the 30th January:—

"His lordship observed, that the examiners had acted with great propriety in bringing forward the case, as it was one of great importance to the general profession. The grounds upon which they had objected to examine Mr. Bateman appeared to the court to be of sufficient importance to justify the objection, and it was no answer to such considerations, to say that the applicant was not expressly or directly disqualified by the statute. The application was made to the discretion which the court exercised over subjects of that nature, and though no imputation was made upon the applicant, as to his personal conduct, yet he had placed himself in a position which threw upon the court the necessity of inquiring whether such a connexion as that which had occurred in the present case ought to be allowed to exist.

To him (Lord Denman) it appeared that the danger of such a combination was great and manifest, and however painful it might be to the court to act upon such an impression in the present instance, it was their duty to see that no connexion should be made between the two branches of the profession which would be likely to lead to any malversation in either.

"The fact of a particular individual being a barrister at the same time that he was serving under articles of clerkship to an attorney, opened the door to abuses the most obvious and considerable; whilst a person who had been placed in such a position as the applicant, and who at the end of the service might wish to continue at the bar, would have acquired by his preceding position the most unfair and improper advantages. The present case did not at all resemble those in which the court had granted indulgence to parties who were obstructed by technical difficulties, arising from the loss of documents, the irregularity of stamps, or other defects of a similar nature.

"The case of *Ex parte Cole* seemed to decide the present *à fortiori*; for if a barrister ought not to become an attorney whilst he continued a barrister, with much less propriety could he become an attorney's clerk. Upon the whole matter, the court was of opinion that they should be acting wrong if they allowed any doubt for one moment to exist upon such a question, as whether a person who, whilst he was a barrister, had served as a clerk under articles to an attorney, would be afterwards allowed to avail himself of that service for the purpose of being sworn in as an attorney."

#### MANCHESTER LAW ASSOCIATION.

THE annual meeting of this society took place on Friday, the 11th January. The report of the proceedings of the society during the last year was highly satisfactory. It detailed the exertions of the committee, particularly during the last session of parliament, with regard to the various bills in parliament affecting the law and practice. The society consists of about 200 members, and is evidently one of the most active of the provincial societies. Its exertions have led to the formation of the Provincial Law Societies' Association, the resolutions of which we gave at p. 224, *ante*.

The following is the sixth annual report of the committee of management:—

"The committee have sincere gratification

in presenting to the members, at their annual meeting, a short epitome of their proceedings during their period of office.

"On no former occasion have the advantages of associations like the present been so strikingly apparent or so generally admitted; and the great increase of members, and the commendations of the public press, are gratifying proofs that the efforts of your committee fully to carry into effect the objects of the society have not been unsuccessful.

"Several measures of great importance to the profession were introduced into parliament during the last session, to all of which the best consideration was given; but before alluding to them in detail, your committee have to acknowledge the courtesy of the members for the borough, who, prior to the commencement of the session, sought an interview with your committee, for the purpose of obtaining their views on the various bills interesting to the profession of which notice of introduction had been given. To M. Phillips, E. Buckley, and J. Brotherton, Esquires, your committee are deeply indebted for their attention in forwarding to the honorary secretary the bills as they were severally introduced, and for the consideration given by them to all communications from this society.

"Among the bills alluded to were several measures for the more speedy recovery of small debts. The one brought in by Sir James Graham was found to be by far the least objectionable; and your committee, hoping through the medium of this bill to get rid of the Salford Hundred and Manchester Manor Courts, determined (with certain modifications) to give it all the support in their power. A petition therefore, numerously signed, strongly setting forth the evils of the above courts, and suggesting the introduction of a clause destroying altogether their civil jurisdiction, was forwarded to Sir James Graham for presentation.

"Your committee have pleasure in stating, that although those courts still exist, yet that through their representations the 'Bailiffs of Inferior Courts Bill,' passed, and will be found to remedy many of the evils complained of. A further opportunity of endeavouring to get rid of the civil jurisdiction of those courts altogether, within the borough of Manchester, may present itself to the committee for next year, as it is intended to apply to parliament for powers to bring into operation the Borough Court of Record. The bill for that purpose will require watching by the committee, to take care that it contains no clause which will prevent any attorney in the superior courts from practising in the Borough Court of Record.

"To the County Courts Bill for the County Palatine of Lancaster, introduced by Lord Granville Somerset, your committee offered the most strenuous opposition, considering the measure totally unnecessary and highly objectionable, inasmuch as it created another and distinct jurisdiction, applicable only to a particular locality, with all the various offices, &c.

centred in Preston, a distance of thirty miles from this town. Reasons against the bill were prepared with great care, and a deputation of this society, consisting of such of the members as were then in London, waited upon his lordship, by appointment, and discussed at considerable length the provisions of the bill.

"The bills introduced by Mr. Jervis and Mr. Watson for improving the jurisdiction of the superior courts, your committee considered equally objectionable, but as all the bills alluded to were ultimately withdrawn, it is not considered necessary to state in detail the measures they had arranged for opposing their further progress.

"The bill introduced by the Lord Chancellor for simplifying the transfer of real property received the consideration so important a measure demanded; and as it was found that the alterations sought to be effected were generally great improvements upon the old system, without at the same time trenching upon any important principle, a petition from the society in favour of the measure was presented by his lordship. The bill subsequently, with the omission of some clauses, passed into a law.

"Your committee endeavoured to carry into effect the recommendation contained in last year's report, to get a clause introduced into the Ecclesiastical Courts' Bill enabling solicitors to share in the fees paid to proctors; and a petition to that effect was prepared and presented to the house; but the bill was withdrawn before anything could be accomplished.

"Numerous points of practice have been submitted for decision during the past year; and as a uniform system is highly desirable, your committee strongly recommend that notice of the various opinions of the committee should from time to time be sent to the members.

"Your committee considered it their duty to call the attention of the Incorporated Law Society (with whom they have been in frequent and friendly correspondence) to two persons in this town, who had given notice of their intention to apply for a renewal of their certificates. They considered that in both instances the application should be opposed. The result was, that neither of the parties alluded to persisted in his application.

"By far the most important object which has occupied the attention of your committee, is the union of provincial law societies. At a general meeting of the Yorkshire society, held in March last, the great importance of a permanent union between the different law societies in the country was strongly urged, and Manchester was fixed upon as the proposed place of meetings. Your committee having received a copy of the resolutions passed at the above meetings, passed a resolution pledging themselves to render every assistance in their power in endeavouring to promote the union, and to render the meeting effective for the important objects sought to be attained. Your committee have pleasure in stating that the proposal met with the cordial concurrence of most of the principal

law societies, and the following have signified their intention of joining the union, viz.: Birmingham, Cumberland, East Kent, Gloucestershire, Hull, Leeds, Lincolnshire, Liverpool, Newcastle-upon-Tyne, Oxford, Plymouth, Somersetshire, (Bridgewater Junior Club,) West Riding of Yorkshire, and Lancaster. The objects of the union are chiefly to promote the interests and watch over all legislative and other interference with the just rights of the profession; to assist in obtaining all useful and practicable amendments of the law; and to adopt measures for preserving the respectability of the profession.\*

"Your committee feel assured that if these objects are fully carried out, and a means of mutual and cordial co-operation firmly established, the union will prove of incalculable advantage to the profession, by concentrating the power and influence which they, as a body, possess.

"Your committee, owing to the additional accommodation that would be required for the purposes of the union, strongly recommended that the premises, No. 4, Norfolk Street, should be taken for the purposes of this society, and seven of the members at once consented to become lessees for 21 years, at the annual rent of 200*l*.

"The lessees have arranged, that the rooms on the ground floor shall be used for sales, and have fitted them up accordingly. The loss of time, expense, and inconvenience of sales being held at hotels, and in the evening, have long been felt; and your committee thought that, if suitable rooms were provided in a central situation, not only the evils alluded to might be avoided, but that there would be a much greater probability, (if sales were held at more convenient hours of business), of the property offered bringing its legitimate value. The experiment has been tried, and the results up to the present time have fully borne out the expectations they had formed.

"The lessees have arranged with the committee of the Law Library for the letting to that society of two rooms in that building, and the remainder of the premises will be used for references, meetings of creditors, and other purposes connected with the profession. A moderate scale of charges has been fixed for the use of the rooms, and your committee confidently trust that the members will at once see the importance of aiding the lessees in carrying out their views, in doing which, your committee feel assured, a considerable revenue for the purposes of the society may be relied upon.

"Your committee also strongly urge the importance of the members meeting daily, whenever practicable, for a short time in the committee room. This arrangement will, in their opinion, tend in many ways to facilitate the transaction of a vast amount of legal business between the members, with the greatest economy of time, and prove of peculiar advantage to those residing at a distance.

\* The objects of the society are here well stated.—*Ed.*

"Your committee, considering it highly important that law students should, if possible, have the opportunity of attending lectures, have arranged, with the kind assistance of a resident barrister, to give, during the present winter, a course of thirteen lectures on different branches of the law, to which all the members and their articled clerks have free admission. Your committee trust that, should the experiment be found to answer their expectation, their successors will devise some means of continuing so important an advantage.

"Your committee, in concluding their report, cannot avoid congratulating the members on the high standing to which this society has attained, and expressing a hope that nothing will occur to diminish its influence, or take away from its utility. And they wish forcibly to impress upon the members, that at no former period were active exertions and cordial co-operation more essentially necessary for the preservation of the best interests of the profession."

## SHORT CONVEYANCING FORMS.

*To the Editor of the Legal Observer.*

SIR,—As you seem disposed to enter on the subject of long forms and short forms, (see the number of the *L. O.*, p. 178, *ante*.) I beg to hand you two specimens, one of each sort, of the years 1792 and 1800, thinking they may be useful. You may rely on their genuineness, though I suppress the names.

D.

In a mortgage for 100*l.*, dated 3rd Dec. 1792, the covenant for quiet enjoyment by the mortgagor until default, commences thus:—

"And lastly, it is covenanted, granted, and concluded upon by and between the said parties to these presents, and it is the true intent and meaning of them and of these presents, and it is hereby so declared, That," &c.

Trustees Indemnity Clauses in a Will, dated 17th May 1800:—

"And it is my mind and will that the said and shall not be answerable the one for the other of them, or for involuntary losses, and that it shall be lawful for them and the survivor of them, him trustees or administrators, to reimburse themselves their costs and expenses in discharging the trusts in them reposed."

The following from another correspondent will serve as a commentary on the above:—

### SHORT DEEDS.

I admit that brevity in conveyancing is desirable, but the matter brings to my recollection, some 40 or 50 years ago, a conveyance prepared by a conveyancer in the north, who omitted the usual covenants, merely

directing that the words grant, bargain, sell, &c. should be deemed and construed to amount to covenant, that the seller was seised, had power to convey for quiet enjoyment free from incumbrance and from further assurance.

The purchaser was ejected and brought his action on the covenant, and the court held him to be without a remedy.

A.

## SUGGESTED IMPROVEMENTS IN PRACTICE.

### SWEARING AFFIDAVITS.

As suggested by a valuable correspondent, we willingly call the attention of those in authority to the great inconvenience sustained by the profession, especially those residing at a distance from the inns of court, in having to attend to depose to affidavits.

A limited number of the profession, in various parts of London, might be entrusted with the power, and thus save the trouble of clients attending at an inconvenient time and a great distance. The fees ought not to weigh a feather against the public convenience.

### SERVICE OF PROCESS.

It would be very convenient, were it permitted, to serve process issued into one county in another. As the object of service is merely to give the defendant notice of the action, we are not aware of any objection to this suggestion. Practitioners are continually subjected to the greatest inconvenience from the present restriction.

## APPORTIONMENT OF RENTS.

4 & 5 Wm. 4, c. 22.

MR. EDITOR,—Can any of your learned readers reconcile the case of *In re Markby*, 4 Myl. & Cr. 484, and *Browne v. Amyot*, 3 Hare, 173; or the following passages extracted from the judgment in the latter case, p. 181?

“In the preamble in the first section *other cases* are mentioned, \* \* \* and to *these cases* the enactments in the 2nd section *exclusively* apply.

“The result is, that the *preamble* is *general*, and the *expressions* of the *enacting clause* must *determine* the case.”

The Lord Chancellor in the former case speaks of section 2 as containing a clause large enough to embrace every kind of payment coming due at fixed periods, and states the

only question to be, “*the time at which the instrument was to be executed*,” but if the statute does not apply to cases of persons seised in fee, that case ought to be determined on that ground, and not on the secondary ground that the leases were not in writing.

M. W.

## SELECTIONS FROM CORRESPONDENCE.

### TRANSFER OF RAILWAY SHARES.

CAN a share-broker legally prepare transfers by way of mortgage or sale of railway shares, and get them executed by the parties, although he makes no charge for such transfers, including the trouble in his commission? This practice is a great infringement on the emoluments of the profession; and now that railway capital has become a very important stock in the country, and hundreds of transfers are daily made, these transfers, if confined to the legal practitioner, (as it legitimately ought,) would form a very considerable item in his account.

AN OLD SUBSCRIBER.

### FEES FOR TAXING LAW BILLS.

I HAVE lately been consulted by a poor man who has been charged between 400*l.* and 500*l.* by a solicitor, for law business of a most extraordinary character, consisting of numerous journeys into the country, for which he alleges he never gave any sanction whatever; and the solicitor has not only applied all the money he received towards liquidating the account, but also brought in the poor man a debtor for an alleged balance, and obtained a very anomalous security by way of assignment on some copyhold property to which he became entitled.

Now this poor man wants to tax this bill; but the enormous per centage absolutely precludes him, and its enormity tends to deprive him of his rights; for with a per centage of 4*l.* per 100*l.* the costs of the taxation would in all probability amount to, if not exceed, 40*l.* Surely this is a fitting subject to be brought before those in power. I have heard many solicitors of eminence declare that they would consider themselves well paid by one per cent. only.

A SOLICITOR.

### LOAN SOCIETIES.

Permit me to call the attention of the profession to the enormous evils resulting from Loan Societies. I am willing to hope they are not got up

by professional men, for the sake of filthy lucre; but when it constantly occurs that numerous actions are from time to time simultaneously commenced against the borrower and his sureties, for the recovery of their promissory notes of 5*l.*, and that in many cases the aggregate costs against all parties amount to little short of ten times that amount, it is by no means creditable to any respectable member of the profession to be engaged in such iniquitous proceedings, entailing, in too many cases, absolute ruin on all the parties.

I feel confident, that were it possible to procure a parliamentary return of the number of such actions, the grievances would be astounding. It is manifest that such proceedings must necessarily involve the incautious parties and their families in utter ruin.

I admit the remedy is difficult; but still an exposure of such practices would in some degree prevent a continuance of the evil.

A.

#### UNEQUALLED PRACTITIONERS.

MR. EDITOR.—I fear it is but too natural for men smarting under injuries to propose, without much consideration, remedies pregnant with injustice to, and contrary to the rights of their fellow-men. I have often troubled you with letters, and once had incidentally to complain of some of the more opulent solicitors who, so far from wishing to see the unjust, unequal, and oppressive certificate duty repealed, were in the habit of expressing themselves in favour of its augmentation, in order to keep a number of the less rich and prosperous attorneys out of the profession, which they the more opulent considered to be overstocked. Akin to this idea in mischief, though I trust not in deliberate selfishness, is the proposal made by L. in your number of the 25th Jan., to prevent regularly admitted attorneys from dividing their profits with parties acting as their clerks, and bringing them business by giving power to summon the parties and examine witnesses, &c. on oath. This is to compel a party to criminate himself, which the law of this country so abhors, notwithstanding the good that in some cases might result from it; that it only exists in one case where certain great law officers and ministers of state have, for a peculiar purpose, such a power intrusted to them, with respect to which, the late Lord Ellenborough expressed his thankfulness that in no other case did such a power exist in any judges.

I feel deeply the injuries inflicted by the legislature on a great part of the profession, and as I have before taken the liberty of stating to you, I am for telling parliament boldly that, as they and the nation have taken the money of the solicitors to a great amount for many years, on the faith that their profits would pay for it; (for so Mr. Pitt declared, when he made what I have always called a contract with the attorneys on bringing in his bill to enforce a duty on articles, &c.); they, the legislature and country are bound, as they have broken the contract, and taken away the profits, to make

compensation, however difficult and troublesome it may be, and I consider the certificate duty should be immediately repealed. That alone will be very little. There must be compensation as well. It is not exactly my own case, but I have heard of attorneys absolutely ruined by some of the late changes.

Yet, Mr. Editor, let us never propose as a remedy for the injuries we sustain, anything injurious to the liberties of Englishmen, but rather suffer wrong than attempt to compel our fellow-subjects to answer, on oath, to a charge that may expose them to penal consequences.

I perfectly agree with L. in reprobation of the practices to which he alludes, and I wish it could be arrested; but much fear it will be found difficult to attain the object of your correspondent. I will, however, trouble you shortly with a most glaring case, far worse than any he alludes to, but which is, notwithstanding, true, the facts having been admitted by the attorney implicated, on his application to be discharged, made to the Insolvent Court some years since; and at the same time communicate the opinion of counsel as to the law on those facts, which will show the difficulty of dealing with these cases.

P. R. A.

#### RESULT OF THE HILARY TERM EXAMINATION.

WE learn that of the 78 candidates who were examined on the 23rd instant, with a view to be admitted on the Rolls of Attorneys and Solicitors, 74 were passed and 4 postponed.

These were exclusive of one candidate who was examined *de bene esse*, subject to an important question relating to his service, which has been since submitted to the court and decided against him. A notice of that case will be found in another part of the present number.

We understand that the suggestion of prizes or distinctions to those who pass the best examination, has been again revived, and that it is not improbable the subject will be taken into the consideration of the examiners. The stimulus to exertion would no doubt be beneficial to many students, but we have some doubts whether it would be generally advantageous.

#### AMENDMENT OF THE TRANSFER OF PROPERTY ACT.

WE understand that a bill to amend this act will be brought into parliament early in the session, and that the preparation of it has been confided to Mr. Bellenden Ker, Mr. Christie, and Mr. Hayes.

**ATTORNEYS TO BE ADMITTED.**

*In Easter Term, 1845.*

[Concluded from page 245, ante.]

**Queen's Bench.**

*Clerks' Names and Residence.*

*To whom Articled, Assigned, &c.*

Moore, Walter Henry, Ufford, near Woodbridge	Edwin C. Everitt, Woodbridge.
Marsh, Robert, 43, Chapel Street, Grosvenor Square; Ickles; and Bird's Buildings, Islington	J. Churchyard, Woodbridge.
Mackrell, John, 43, Lamb's Conduit Street; and Andover	W. F. Hoyle, Rotherham.
Molineaux, Frederick, 2, New Inn; and Chichester	Harry Footner, Andover.
Morgan, Alfred Fairfax, Albion Place, Hockley, near Birmingham; and Hunter's Lane, Aston	J. B. Freeland, Chichester.
Matthews, Edwin D. Thomas, 82, York Road, Lambeth; and Norwich	William Morgan, Birmingham.
Murdock, John, 33, Winchester Street, Pentonville	Edward Steward, Norwich.
Mantell, Alexander Houstoun, Farringdon; and High Wycomb	Thomas Randall, Castle Street, Holborn.
Maberly, Thomas Henry, Colchester; and Pratt Street, Camden Town	John William Wall, Devizes.
Owen, William, 4, Great Percy Street, Claremont Square	Thomas Maberly, Colchester
Owen, Arthur Watkin, 12, Wakefield Street, Regent Square; and Mold	Samuel Edwards, Denbigh.
Pridmore, Richard, 47, Canterbury Street, York Road, Lambeth	Copner Oldfield, Holywell.
Peter, Simon, Liskeard	Hugh Roberts, Mold.
Paterson, Edward Alexander, 2, Albion Street, Hyde Park	George Ashley, 7, Old Jewry.
Paull, John Richards, 36, Sidmouth Street, Regent's Square; Everett Street; and Harpur Street	B. Hart Lyne, Liskeard.
Reeve, Richard Henry, 106, Great Russell Street; Southampton Row; and Lowestoft	E. Lyne, Liskeard.
Rainback, Thomas Emmerson, Greenwich	William Paterson, Old Broad Street.
Rhys, Charles Thomas, 16, Featherstone Buildings; and Neath	Joseph Roberts, Truro.
Rudd, John, 43, Arlington Street, Hampstead Road; and Yarm	G. Faulkner, Bedford Row.
Smith, Frederick, 5, Newman Road, Lincoln's Inn Fields; and Crediton	Edmund Norton, Lowestoft.
Spaffins, Henry Mills, 59, Burton Crescent; and Essex Street, Strand	Thomas Rogers, King Street, Cheapside.
Solomon, Joseph, 4, Chester Terrace, Borough Road	Alexander Cuthbertson, Neath.
Shotton, James George, 21, River Street, Myddelton Square	William Fawcett, Yarm.
Spooner, Thomas, 6, Wells Street, Gray's Inn Road; Leicester; and Munster St.	Henry Hill, 4, Verulam Buildings.
Sanders, Henry, Nottingham	Messrs. J. G. & F. E. Smith, Crediton.
Stringer, Samuel, 45, Gower Place; and Stockport	Henry Rogers, Thetford.
	C. T. Kenyon, Brandon.
	T. Borrett, Lincoln's Inn Fields.
	Edward Cole, Great Charlotte Street.
	John Beart, Bouverie Street.
	Charles Arrowsmith, the younger, Devonshire Street.
	S. Edwards, Long Buckley.
	Thomas Ingram, Leicester.
	Samuel Sanders, Nottingham.
	John Harrop, Stockport.
	T. H. Bower, Chancery Lane.

- Simpson, Reuben, 16, Shaftesbury Terrace, Pimlico . . . . . J. Goodeve, Raymond Buildings.
- Sole, John Lavers Liscombe, 31, Albion St., Hyde Park; Devonport; and Claremont Terrace . . . . . Edward Sole, Devonport.
- Stevens, Richard, Londoun Place, Brixton; and Witham . . . . . E. Wilson Banks, Witham
- Smith, Montague George, Peter's Port, Island of Guernsey . . . . . William Smith, Hemel Hempsted.  
John P. Dyott, Lichfield.  
Anthony Blyth, Burnham.
- Serjeant, William Pye, 48, Jewin Street, Aldersgate; 2, Baker Street, Lloyd Square; and Plymouth . . . . . Charles Cobley Whiteford, Plymouth.
- Tomlin, James Robinson, 3, Gloucester Street, Queen's Square; Arlington Street; and Richmond . . . . . O. Tomlin, the Elder, Richmond, Yorkshire.  
J. Williamson, 4, Verulam Buildings.
- Tweed, John Thomas, 4 Alfred Place, Bedford Square . . . . . Thomas Jones, the younger, Millman Place.
- Travers, Marcus, Clapham, New Park . . . . . Samuel Amory, Throgmorton Street.
- Tucker, Andrew, the younger, 4, New Millman Street; and Bellair House, near Charmouth . . . . .
- Tudge, John Williams, 2, Cloudeley Street, Presteign; and High Street, Aldgate . . . . . J. H. Benbow, Stone Buildings, Lincoln's Inn.  
Thomas King Stephens, Presteign.
- Veal, Henry James, 4, Lloyd Street, Lloyd's Square; and Great Grimsby . . . . . Questor Veal, Great Grimsby.
- Van Sommer, James, Cirencester; and Chatham Place, Hackney . . . . . Robert Riddell Bayley, Basinghall Street.
- Vaughan, Samuel Bradford, 16, Argyle St., King's Cross; and Symond's Inn . . . . . F. John Manning, Craven Street, Strand.
- Wilson, Thomas, 14, Regent Square; Alnwick; and Marchmont Street . . . . . William Dickson, Alnwick.
- Waller, Thomas Henry, 188, Sloane Street, Knightsbridge . . . . . William Saltwell, Carlton Chambers.
- Willers, John Warin, 23, Wakefield Street, Regent Square; and Peterborough . . . . . John Boughton, Peterborough.
- Walker, Edward, 4, Great Percy Street, Claremont Square . . . . . Richard Williams, Denbigh.
- Weller, George Henry, 8, King's Road, Bedford Row . . . . . George Weller, King's Road.
- Wilson, Charles, 15, Tavistock Place, Manchester; and Connaught Terrace . . . . . Henry Charlewood, Manchester.
- Wilkinson, Joseph Edmund, 11, Brunswick Street, Barnsbury Road, Islington; and Preston . . . . . William M. Wilkinson, Market Drayton.  
Peter Haydock, Preston.  
Edward Chester, Staple Inn.
- Whitcombe, Robert Henry, 4, New Millman Street, Bewdley; and Upper Baker St. . . . . Edward Richmond Nicholas, Wribbenhall, near Bewdley.
- Wodehouse, Charles, 41, Carey Street, Lincoln's Inn Fields; Ormond Street; and Bury St. Edmunds . . . . . John Green, Bury St. Edmunds.  
Henry Goodford, Lincoln's Inn.
- Wood, Frederick John, 1, Brown's Terrace, Canonbury Square . . . . . Henry Diggory Warter, Carey Street.
- Yorke, Henry, 6, Myddelton Square; and Oundle . . . . . George Croxton, Oundle.  
Henry Smith, Warnford Court.
- Yateman, Herbert George, 18, Norfolk Crescent; Hyde Park . . . . . Charles Druce, the younger, Billiter Square.

*Added to the List pursuant to Judges' Orders.*

- Delmar, James Frederick, Canterbury . . . . . Henry Kingsford, Canterbury.
- Jackson, John Thomas Dodd, 1, Walbrook Buildings; Wellington . . . . . John Richards, the younger, Reading.  
William Burridge, Wellington.
- James, John Gwynne, 6, Thavies Inn . . . . . Francis Lewis Bodenham, Hereford.
- Walter, William, the younger, Kingston-on-Thames . . . . . William Walter, senior, Kingston.  
Arthur Ellis, Conduit Street.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

TITLE.—LEASEHOLD.—SPECIFIC BEQUEST.  
—ASSENT OF EXECUTORS.

*A testator gave a leasehold house and his residuary estate to his wife and others, (whom he appointed his executors,) in trust to permit the wife to receive the rents and profits for life, and after her death to pay legacies; and he gave the residue to such of four persons as should survive his wife. These four agreed by deed to take the residue as tenants in common. The testator's wife was permitted by her co-executors to remain in possession of the house during her life. Held, that the co-executors had not thereby assented to the legacies to the residuary legatees, and that at the wife's death the leasehold was assets in their hands, and they could make a title thereof to a purchaser.*

THE question in this appeal arose in a suit by information filed by the Attorney-general for an account and payment of duty upon legacies given by a will, dated in 1814, whereby the testator, after giving certain legacies and annuities, gave his leasehold house in Bath, and his residuary estate, to his wife and four others, on trust to permit his wife to take the rents and profits thereof for her life, and after her decease he gave further pecuniary legacies, and then gave the residue to such of four persons named as should survive her; and he appointed her and the other four trustees his executors. The testator died in October 1814. His will was proved by his widow and three of the executors, the fourth renouncing probate. One of the executors who proved died in 1816. In 1817 the four residuary legatees agreed by deed to take their interests as tenants in common. The widow having been permitted to enjoy the house in Bath during her life, died in March 1823, leaving two executors surviving, viz., John Lane, since deceased, and the defendant James Potter, who thereupon paid the legacies which then became payable, and divided the residue, except the said house, among the residuary legatees. The house was sold in April 1823, for 1,800*l.*, to Dr. Bowie, who, after paying 270*l.* as deposit, was let into possession, but the contract was never completed. The executors computed the legacy duty arising under the will at 1,020*l.*, but did not pay it, and on the filing of the injunction it became a question, who and what property was liable to the crown for the duty.

The decree made in the cause in 1838 directed the usual amounts, and declared Potter and the representatives of Lane bound to pay the

duty, without prejudice to any question between the parties interested under the will, by whom such payment should ultimately be borne. It was farther declared, that the leasehold house was liable, in the first instance, for the payment, and it was referred to the Master to inquire whether a good title could be made thereto, and from what time, &c.

In 1842, the Master reported that the defendants could not make a good title, on the ground that the house had been specifically bequeathed to the testator's widow for her life, with remainder to the residuary legatees, and that the executors having assented to the legacy, the house ceased to be assets, and was vested in the legatees, and therefore the executors having no interest in it, could not give a title to a purchaser. The representatives of Lane excepted to the report. The Master of the Rolls allowed the exception.

This was an appeal from his lordship's decision.

Mr. Swanston, Mr. Roupell, and Mr. Wood, for Dr. Bowie, in support of the appeal.

Mr. Bethell and Mr. Lloyd, contra, for Potter and the representatives of the deceased executor.

The arguments used were to the same effect as those urged in the court below. The authorities cited were the same.

The case having stood over for consideration,—

The Lord Chancellor now gave judgment: A testator by his will, after bequeathing several legacies, left a leasehold house in the city of Bath, together with all his real and personal estate, to trustees, on trust to permit his wife to take the rents and profits for her life. The trustees so appointed were also his executors. After the death of the wife of the testator, and the satisfaction of some legacies and payments, the trustees were directed to convert all the real and personal estate into money, and divide it among such of certain persons as might be living at the time of the wife's death. It was to be observed, that the leasehold house was mentioned as forming part of the personal estate. The terms of the trust were, that the wife should receive the rents, interest, and profits. The enjoyment was therefore to be in specie. On the death of the widow of the testator, the trust was at an end. Whether the persons named for the execution of the trust were executors or trustees, their duties remained the same: they were to pay the rents and profits to the widow for her life; they were to pay annuities, and at the death of the widow and annuitants, they were to convert the whole of the property into money. No part of it was distinguished from the rest: all was given as residue, and formed general assets in the hands of the executors, to be divided among the legatees. After the death of the wife, the leasehold property became a portion of the general assets. The case was widely different from that of a gift of a term with remainder to



another. The exception must be allowed, and the order of the Master of the Rolls affirmed.

*Attorney-General v. Potter and others*, 19th Nov. 1844.

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### PRACTICE.—SOLICITOR AND CLIENT.—TAXATION OF COSTS UNDER 6 & 7 VICT. C. 73.

*On a reference to the Master to tax a solicitor's bill of costs, under the 6 & 7 Vict. c. 73, and to take an account of sums received and paid by the solicitor on account of his client, the court will not include in the inquiry a sum claimed by way of set-off to be due to the client for goods and work and labour supplied by him to the solicitor.*

A PETITION in this matter was presented in December last, praying for the usual order under the 6 & 7 Vict. c. 73, to tax the bill of a deceased solicitor, and to take an account of all sums received and paid by him on account of the petitioner. The petition stated that the bill of costs claimed to be due to the solicitor exceeded 1,200*l.*, that various sums had been paid to the solicitor during his life in respect thereof, and that besides the sums so paid, there was a sum of 67*l.* due to the petitioner for medicine and medical attendance, the bill for which had been delivered to the administratrix of the solicitor; and prayed for a reference to the Master to tax the bills, and take an account of the sums so received and paid, and also of the sum so due for medicine and medical attendance. On the 15th of December, an order was made by consent, according to the prayer of the petition, power being reserved to the administratrix to deliver any further bills that might be claimable by her against the petitioner. A deficiency having occurred in drawing up this order, in consequence of its being suggested that the Master had not the power to inquire into a medical bill, the matter was again brought before the court to be spoken on on minutes.

*Miller*, in support of the order, contended, that as it had been the subject of arrangement by the terms of which the respondent was allowed to deliver any further bills that could be claimed against the petitioner, the sum mentioned in the petition as the amount of the bill in question must be considered as admitted, and so allowed by the Master, if it should be held that he had not the power of inquiring into it, and that at all events the petitioner should not be deprived of his right of set-off when it was avowed on the other side that the estate of the solicitor was insolvent.

*Follett*, contra, insisted that the Master had no power, nor would he take upon himself to inquire into the charges of a surgeon's bill, and that as there was a suit pending for the administration of the solicitor's estate, the petitioner must establish his claim before the Master in the usual way.

The Master of the Rolls said, there was no power under the act for directing the taxing master to take an account of the bill in question, and the order must be varied in that particular, but the petitioner might prove his debt before the Master in the administration suit, and in taking the account before the taxing master the petitioner must have credit for the amount of any debt which he should establish before the Master in the suit.

*In re Harrison*. Jan. 21, 1845.

### Vice-Chancellor of England.

[Reported by E. VANSHITTART NEALE, Esq., Barrister at Law.]

#### WILL, CONSTRUCTION OF.—FREGATORY WORDS.—TRUST.

*A testator exhorted and entreated a party, to whom he had absolutely bequeathed all his property, to make ample provision, by deed or will, for his only daughter and granddaughter, and expressed his confidence and belief that the donee would do so. Held, not sufficient to create a trust in favour of the granddaughter.*

THIS was a demurrer to a bill by a party who claimed to be cestui que trust under the will of her grandfather. It appeared that the grandfather, by his will, after reciting that he "was desirous of making a suitable provision for his dear wife and daughter, and granddaughter," continued thus: "To manifest my deep affection and unbounded confidence towards my said dear wife, and believing her to be actuated by the most maternal regard towards our child, and intending to mark my feelings towards her, now therefore"—there followed a bequest to his wife of all his estate and effects,—“to hold the same for her sole use and benefit, except the bequest to my daughter,” she, “well knowing my sentiments as she does, and I relying on her attachment to our daughter, and believing that she will act generally under the immediate advice and judgment of my executors.” These provisions were followed by a direction to call in the outstanding parts of the estate, and invest the same “in my wife’s name, or jointly with my executors, as may be deemed most agreeable to my wife.” And then the testator, reciting that he had thereby manifested complete confidence in his wife, by giving her the control over his property, which she would exercise, proceeded: “I earnestly conjure her, under the advice of my executors, forthwith to make ample provision, by deed or will, for our only child and grandchild,” taking especial care that the husband of the daughter shall not have any control over the provision so made for her. The testator ended by giving all the residue of his real and personal estate to his wife.

The testator’s wife died during his life time. After her decease he made a codicil to his will, thus legally republishing it; but the codicil did not affect any of the provisions before men-

sized, containing nothing but a gift to a servant of a legacy. The testator's daughter lived separate from her husband, from whom she had been divorced *a mensa et toro*. The legal estate in the property was in the executors, against whom, the testator's daughter, and her husband, the bill was filed by the granddaughter, praying to have the will established, and its trusts performed in her favour. To this bill the husband of the testator's daughter demurred, on the ground that the directions in the testator's will were of too uncertain a kind, and left too much to the discretion of his wife, to create any such trust in favour of the granddaughter as the court could carry into execution.

*Bethell and Wright*, for the demurrer, cited *Meredith v. Hensage*, 1 Sim. 542; *Sale v. Moore*, 1 Sim. 534; *Knight v. Knight*, 3 Beav. 148.

*Wakefield, Stewart, and Grimshaw*, for the bill, contended that the first part of the will, by which an absolute authority over the property bequeathed was given to the wife, was cut down by the subsequent directions in favour of the daughter and granddaughter; which must be considered as one of the objects contemplated by the testator, though the desire of manifesting affection to his wife influenced the mode of giving effect to his intention. They said that confidence was synonymous with trust; and that although the wife was dead, the executors, under whose advice she was to act, were still alive, and must be looked upon as the trustees. Besides, the court would never allow a trust to fail for want of a trustee. They distinguished the case from *Meredith v. Hensage*, by observing, that there the amount of the property on which the trust was to attach was uncertain, and the persons in whose favour it was made unascertained; neither of which circumstances was here the case. They noticed the improbability of a testator giving a legacy to his servant, and yet making no provision for his daughter and granddaughter, as a proof that at the time when he made the codicil he supposed himself to have made provision for them; and argued, that at all events, under the equity of the wife to have a settlement out of her fortune upon herself, her daughter was entitled, so long as the mother did not disclaim that right, to come in and call upon the court to secure her proportion, and cited *Woods v. Woods*, 1 M. & C. 401; *Reikes v. Ward*, 1 Hare, 445; and *Elisbank v. Montolien*, 5 Ves. 737.

His Honour said, it seemed to him a very plain case. He did not assent to the proposition, that while the fund remained in the hands of the trustees in a state of quiescence, and neither the mother nor the husband had done any act showing a wish to change its situation, the present plaintiff had any interest, as in right of her mother, which the court could enforce. Then as to the will; it appeared to him that there was a great confusion in the mind of the testator about the law. His Honour then read the passages before quoted

from the will, remarking that, from all the first part previous to the direction to invest, he could not spell out that the will intimated that the daughter or granddaughter, or both, should be owners of the thing given to the wife; but that the words amounted to a gift to her, for her own use absolutely. Then the direction to invest, which she had a right to call upon the trustees to make in her name, did give a most complete authority over the property to the wife. Now how was that cut down? His Honour read the precatory words in favour of the daughter and granddaughter, and observed that he did not see how the request to make ample provision for them, could show that the whole of what should come to the wife, or any definite proportion of it, should be settled on the child. The power to make the settlement by will implied that the wife was to have her whole life to make the provision. But even if the words "ample provision" could amount to a gift of the whole of a testator's real and personal estate in any case, it could not do so here, where the testator went on to give the residue to his wife. Then as to the codicil; it seemed to him to leave the will just where it found it. It republished the will, but nothing more. When the wife was dead, the testator might say,—The great object of my bounty is gone; I will leave the law to take care of my one child.

Demurrer allowed.

*Winch v. Britton*, Dec. 14, 1844.

Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

CERTIFICATE OF COSTS UNDER THE HIGHWAY ACT, 5, & 6 W. 4, c. 50, s. 95.

*It is not imperative on a judge who tries a road indictment, to grant a certificate for costs under all circumstances under the 95th section of the statute 5 & 6 W. 4, c. 50.*

*Where an indictment was preferred against the inhabitants of a township for the non-repair of a highway, by order of the magistrates at special sessions, and the defendants were acquitted on the ground that the road in question was not proved to be a highway for carriages, and the judge who tried the case gave a certificate (under section 95) for the costs of the prosecution, under the impression that the statute required him to do so, and that he had no discretion on the subject; the court set aside the judge's certificate, being of opinion that the 95th section only applied in cases where the road indicted was found to be a highway.*

IN the month of December 1842, the surveyor of highways for the township of Heanor, in the parish of Heanor, was summoned before the justices assembled at special sessions, at

Derby, pursuant to the 94th sec. of the Highway Act, 5 & 6 W. 4, c. 50, relative to the repair of a road called Milne Hay Lane, in the township of Heanor. The road in question was alleged to be a carriage road, and to be out of repair. The surveyor contended before the justices that the road was not a road for carriages, but had only been used as a bridle road. The magistrates, acting under the impression that the statute left them no discretion in the matter, directed a bill of indictment to be preferred against the inhabitants of the township of Heanor. The case was tried before *Tisdal*, C. J., and a special jury, at the spring assizes, 1844, for the county of Derby, and the defendants were acquitted on the ground that it was proved that the road in question had never been used as a highway for carriages. In Easter term following, application was made to the court for a rule to show cause why a verdict should not be entered for the crown, or why there should not be a new trial, which was refused. In May 1844, a summons was taken out for the defendants to appear before *Tisdal*, J. C., to show cause why he should not certify for the prosecutor's costs, pursuant to the stat. 5 & 6 W. 4, c. 50, s. 95, which enacts, that "the costs of such prosecution shall be directed by the judge of assize before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of the act in the parish in which such highway shall be situate." The learned judge did not think that the facts of the case justified him in giving the prosecutor his costs, but being of opinion that the words of the statute gave him no power of exercising a discretion on the subject, he made the following order:—"The Queen v. The Inhabitants of Heanor, upon hearing counsel, and the attorneys or agents on both sides, and by consent, I do order that the associate for the midland circuit attend with the *nisi prius* record for the purpose of indorsing thereon my certificate for the prosecutor's costs, pursuant to the statute, dated the 27 of May 1844. N. C. *Tisdal*." A rule was afterwards obtained in Trinity Term last for a rule to show cause why the judge's certificate for costs should not be set aside.

Mr. *Humfrey* and Mr. *Gale*, showed cause.

In the first place, the road in question is a highway within the meaning of the statute, and therefore the judge was justified in granting the prosecutor his costs. The interpretation clause, section 5, enacts, that the word "highways," shall be understood to mean all "roads, bridges, (not being county bridges,) carriage-ways, cartways, horseways, bridleways, footways, causeways, churchways and pavements." The defendants do not deny the road indicted to be a bridle road, but they deny it is a road for carriages.

Secondly, the court will not set aside the certificate of a judge, in a case where he has jurisdiction over the subject-matter, and where he has exercised his discretion as to granting the certificate. Where a judge certifies that an

action of trespass is willful and malicious, this court will not entertain an application to set aside such a certificate. In *Reg. v. The Earl of Radnor*,<sup>a</sup> an application was made for a mandamus to magistrates to convict a surveyor of highways in the penalty of 5*l.* for the non-repair of a highway, and to order this repair of the road; but the court refused the application, observing, that the magistrates were to exercise a discretion on the subject, and that the words "shall consist," would of themselves import a judicial act on the part of the magistrates. In *Reg. v. The Justices of the West Riding*,<sup>b</sup> the justices at petty sessions allowed certain surveyors' accounts, under the impression that an appeal lay at the quarter sessions. The court then, after deciding that no appeal lay at the quarter sessions, refused a mandamus to the justices at petty sessions to review their decision, on the ground that the justices at petty sessions having jurisdiction over the subject-matter, this court would not inquire into the motives and reasons which led to that determination. [*Patteson*, J. The framers of this act of parliament seem to me never to have contemplated the question of highway or no highway, but merely the obligation to repair.]

Mr. *Whitehurst* was not heard in support of the rule.

*Lord Denman*, J. C. Other judges have thought with the Lord Chief Justice, that they were bound to certify for costs under circumstances such as the present. How the legislature intended the judges to act, I do not know, but I was induced to doubt whether this could possibly have been the intention of the legislature, from the very gross nature of a case which came before me on circuit. The prosecutor there attempted to throw on the parish the burden of repairing an occupation road, and then boldly contended, that whether he succeeded or not in proving the road indicted to be a highway, he was, nevertheless, entitled to have the costs of the prosecution paid by the parish. To hold that a prosecutor was entitled to costs under such circumstances, would be to offer a premium on indictments. On further consideration, I found that my brother, J. *Patteson*, had held as we are now disposed to hold, that the clause in the statute only attaches where the road indicted is proved to be a highway. If the learned judge had been told this, he probably would not have granted the certificate. So we shall not consider that he has exercised a discretion according to his view of the law, when we find facts before us which were not mentioned in the affidavits on the application to him.

Rule absolute.

*The Queen v. The Inhabitants of Heanor*. Hilary Term, 1845.

<sup>a</sup> 9 Car. & Payne, 288, note.

<sup>b</sup> 1 Q. B. R. 624.

## Queen's Bench Practice Court.

{Reported by E. H. WOOLYCH, Esq., Barrister at Law.]

**INTERPLEADER.—RELIEF OF SHERIFF.—  
CONDUCT OF UNDERSHERIFF.—6 & 7  
VICT. c. 73.**

*The court refused to grant relief to a sheriff under the Interpleader Act, where it appeared that the undersheriff had made a communication, by which the issuing of a fiat in bankruptcy against the execution-debtor had been accelerated, notwithstanding the undersheriff had been professionally concerned for certain creditors of the debtor before the writ of execution was delivered to him, and the 6 & 7 Vict. c. 73, has repealed the 22 Geo. 2, c. 40, s. 14, by which a penalty was imposed upon any undersheriff who should act as a solicitor, attorney, or agent, at any place where he should execute the office of undersheriff.*

*Barstow* applied under the Interpleader Act for a rule, calling on the execution-creditor and claimants of certain goods seized by the sheriff of Dorset, to appear before the court and state the nature of their claims. It appeared that a writ of *fi. fa.* on a judgment against the defendant, entered up on a warrant of attorney, came to the undersheriff's hands on the 5th of Dec., and on the same day the goods of the defendant were seized. On the 6th, the undersheriff received a notice of claim to the goods in question, by certain parties claiming under a deed of settlement. On the 7th, a fiat in bankruptcy issued against the defendant. On the 9th December an interpleader summons was obtained, which was heard before *Wightman, J.*, at chambers, and opposed on an affidavit by the plaintiff's attorney, stating that he was informed, and believed that at the time of the issuing of the *fi. fa.* at the suit of the plaintiff, the undersheriff was acting as agent to the petitioning creditor under the fiat against the defendant, and that after the writ had reached his hands, and before the fiat had issued, the undersheriff had made a communication to the parties prosecuting the fiat, by which the issuing of such fiat had been accelerated, and the plaintiff's execution frustrated; that on delivering the *fi. fa.* to the undersheriff on the 5th Dec., he, the undersheriff, looked at the amount indorsed, and then observed, that it would be of no use to execute the writ, as a docket would be immediately struck against the defendant, and that the deponent thereupon requested him to execute a bill of sale to the execution-creditor, which he refused to do, notwithstanding there was ample time to do so. The affidavit of the undersheriff in answer, denied collusion, and stated that before the writ of *fi. fa.* in question reached his hands, he had been concerned for certain creditors of the defendant, but did not negative the statement that he had made a communication, by which the issuing of the fiat had been accelerated.

*Barstow* submitted, that under the circumstances of the case the undersheriff was justified in the course he had pursued, more particularly since the act 6 & 7 Vict. c. 73, which repealed the 22 Geo. 2, c. 46, s. 14, by which it was provided, that no undersheriff or his deputy, should act as a solicitor, attorney, or agent, or sue out any process at any place where he should execute the office of undersheriff under a penalty of 50*l.* That being so, he was bound both with a view to the interests of his clients, and also, for the protection of the general creditors, when a fiat was about to issue, to make the communication in question. That he was the more justified in such a course when the judgment on which the execution had issued was on a warrant of attorney, a circumstance in itself suspicious. That this proceeding was very different in its nature from the collusive acts of the parties in other cases in which similar applications had been refused.

*Williams, J.* Suppose the sheriff had executed a bill of sale, and it had subsequently turned out that it could not be sustained under the Bankruptcy Act, what penalty did he incur?

*Barstow.*—The liability to an action. The execution-creditor has no right to demand a bill of sale immediately under the circumstances here, where the judgment was on a warrant of attorney, and a fiat was on the eve of issuing. In making the communication in question, in order that the creditors might come in and share-rateably, he committed no dereliction of duty. The sheriff might have called on the *posse comitatus* in executing the writ. The undersheriff was here professionally concerned for creditors of the defendant before the plaintiff's writ reached him, which in the present state of the law he had a right to be, and a duty was thus cast upon him before he received the writ, which he was bound to discharge afterwards. The case was altogether different from that of *Dudden v. Long*,<sup>a</sup> which at first sight might appear an authority against the application, where the court discharged a rule nisi for an interpleader rule, because the undersheriff's partner was solicitor to a fiat under which the defendant had been declared a bankrupt. But the ground of that decision was, that the undersheriff, who for that purpose was identified with his partner, had assumed a character which disentitled him to the relief he sought, subsequently to the delivery of the writ of execution into his hands. But here the undersheriff had been concerned for the defendant's creditors, which since the new act he lawfully might be, long before the writ of execution issued. Whatever, therefore, might have been the case before the late act, the undersheriff was in the present state of the law justified in the conduct he had pursued.

*Williams, J.* No doubt the case of *Dudden v. Long*, which has been referred to, is one in which the facts were much stronger than in the present, but that case is important as recognis-

<sup>a</sup> 1 Bing. N. C. 299.

ing the principle on which the undersheriff ordinarily acts and ought to act, namely, that of entire impartiality between the contending parties. Though it is, no doubt, under the act referred to, competent to the undersheriff to act as an attorney during his undersheriffship, still he is not at liberty to take any steps which may have the effect of defeating a writ of execution which has been delivered to him. Mr. *Barstow* admitted, and indeed it must be assumed, that the undersheriff did, in fact, make the communication complained of, and in referring to the case of *Dudden v. Long*, which he very properly brought to my notice, attempted to distinguish it from the present. I think he has not done so successfully. The undersheriff had no right to make a communication, of which the effect, whether more or less, might be to hasten the issuing of the fiat, and he ought to have held his hand as a practitioner, and refrained from giving assistance to either of the parties in the contest. The rule on which the courts act in cases of *laches*, shows how strictly they hold the sheriff to his duty before they consent to interpose in the manner now prayed, and if there be any sound reason for this rule, how much more strongly does that reason apply in proceedings which may essentially affect the rights of parties who come to the sheriff for assistance. During the pendency of an execution, the undersheriff's mouth ought to be closed, and that has not been the case here. The sheriff must resort to any other remedy which may be open to him, but he has not entitled himself to the one he now seeks.

Rule refused.

*Barstow* then applied for and obtained, on behalf of the sheriff, four days' time to return the writ of *fi. fa.*

*Cox v. Balme.* Q. B. P. C. Hilary Term, 1845.

### Exchequer.

[Reported by A. P. HURLESTONE, ESQ., Barrister at Law.]

#### BILL OF EXCHANGE.—DEFENCE.—INTOXICATION.

*In an action on a bill of exchange, it is a good defence, that the defendant, at the time he signed the bill, was so intoxicated as not to know what he was about, and that the plaintiff was aware of that.*

ASSUMPSIT by indorsee against indorser of a bill of exchange; the defendant pleaded, that at the time when he made the indorsement he was intoxicated, inebriated, drunk, and utterly incapable of knowing what he was doing: of which premises the plaintiff had notice. To this plea the plaintiff demurred specially.

*Horn*, in support of the demurrer.—The plea affords no answer to the action. It is admitted on the record that the defendant had

received consideration for the bill, either in money or goods; he cannot therefore dispute the payment, unless he shows that the bill was procured by fraud. [*Parke, B.*—The plea shows that the defendant was incapable of contracting, and that the plaintiff knew of the defendant's incapacity at the time he took the bill.] That allegation is not equivalent to an averment of fraud. The plea does not state that the plaintiff took advantage of the defendant's condition in order to procure the indorsement. If a person obtains goods from a tradesman, and uses them, he cannot be allowed to resist the payment on the ground that he was drunk when he took them. [*Alderson, B.*—Not if he kept them.] In *Beverley's case*, 4 Coke, 125 b., it was adjudged, that "although he who is drunk is for the time *non compos mentis*, yet his drunkenness does not extenuate his act or offence, or turn to his avail, but it is a great offence in itself, and therefore aggravates his offence, and doth not derogate from the act which he did during that time; and that, as well in cases touching his life, his lands, his goods, as any other thing which concerns him." That doctrine was pronounced on a criminal case; but the same law must apply to a civil suit. It would be strange if a defendant could say—"I owe the money, but I have committed an offence by getting drunk, and therefore I will not pay." In *Co. Litt.* p. 247 a., it is said that *non compos mentis* arising from drunkenness "shall give no privilege or benefit to him or his heirs." In *Jackson v. Medlicott*, 1 Ves. sen. 19, Sir J. *Jekyll*, M. R., decided that the having been in drink is no reason for relieving a man against any deed or agreement gained from him when in those circumstances. The same law is laid down in *Newland on Contracts*, 365. [*Parke, B.*—But here it is stated that the defendant was so completely drunk as to be deprived of reason.] The act of indorsement (which is admitted by the plea) implies some exercise of reason. According to the case of *Marston v. Allen*, 1 Dow. P. C. 42, N. S., an indorsement means a signature and delivery with intent to transfer the bill. Lunacy is no defence to an action for the price of goods sold, unless the tradesman, at the time he sold and delivered them, knew the party to be a lunatic. *Baxter v. the Earl of Portsmouth*, 5 B. & C. 170. Besides, it is consistent with this plea, that the indorsement was made by an agent by procuration, in which case there would have been a good indorsement, although the defendant was drunk. But even if the subject matter of the defence is available, the plea is bad, as it amounts to an argumentative denial of the indorsement. In *Yates v. Boon*, *Strange*, 1104, it was held that lunacy might be given in evidence under the general issue.

*Pollock, C. B.*—You may amend by withdrawing the demurrer, and replying to the plea. All the authorities on this subject are collected in *Kent's Commentaries*, vol. 2, p. 450, where it is said, "The party himself may set up as a defence, and in avoidance of the

contract, that he was non *compos mentis* when it was alleged to have been made. The principle advanced by Littleton and Coke, Co. Litt. 247 a., that a man shall not be made to stultify himself, has been properly exploded, as being manifestly absurd and against natural justice. The rule formerly was, that intoxication was no excuse, and created no privilege or plea in avoidance of a contract; but it is now settled, according to the dictate of common sense and common justice, that a contract made by a person so destitute of reason as not to know the consequences of his contract, though the incompetency be produced by intoxication, is void."

*Parke, B.*—In the case cited from the court of equity, there was only a partial absence of reason, but this plea shows that the defendant was utterly incapable of contracting.

*Alderson, B.*—If a person receives goods when so intoxicated as to be devoid of reason, and afterwards keeps them, there is an implied contract to pay for them, arising from the fact of his having kept them. Here it appears that the party writing his name on the bill was in a state of stupefaction from drunkenness, and it is the same as if he had made the indorsement in his sleep.

*Gore v. Gibson.* Exchequer. Hilary Term, 22nd Jan. 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Panton v. Labertouche*, 1 Phil. 265.

### SECURITY FOR COSTS.—SOLICITOR.

The plaintiff being abroad, his solicitor became surety for costs. A motion was made on behalf of the defendant to have other security substituted in lieu of the solicitor's bond. To support this application it was urged, that in the courts of common law there was an express rule against what was done in this case; and that the policy on which that rule was founded, (namely, the protection of solicitors from importunity by their clients), applied equally to courts of equity.

*Lord Chancellor Lyndhurst.* "I cannot call the practice irregular, because there appears to have been no previous decision upon the point. But I think it an improper practice; and that the rule in the courts of common law, being founded upon sound policy, a similar rule ought to prevail here. I shall therefore make the order."

*Rand v. Macmahon*, 12 Sim. 553.

### COLONIAL PROBATE.—EVIDENCE.—PRACTICE.

This case furnishes a rule of practice, which the wide extent of our foreign and colonial possessions will probably bring into frequent exercise. Samuel Long died at St. Kitt's, having made a will, executed according to the require-

ments of the Statute of Frauds. Probate of this will was granted by the colonial court; and an authenticated copy, or exemplification, was afterwards proved at Doctors' Commons. In a suit instituted here for the administration of Long's estate, it became necessary to establish the will; and for this purpose the plaintiff at the hearing of the cause produced the authenticated copy of the will from Doctors' Commons, with an affidavit annexed, which was sworn by one of the attesting witnesses before the colonial court, at the time when the colonial probate was granted, and in support of the application for that grant. This affidavit showed in terms that the original will had been duly executed and attested, so as to pass real estate in England; and upon such evidence the Court of Chancery was asked to establish the will. But independently of the objection, that only one of the attesting witnesses had sworn to the affidavit in question,

*Vice-Chancellor of England* held, that the evidence not having been taken in the cause, was totally inadmissible. His Honour, therefore, refused to establish the will in that stage; but ordered a commission to issue to the West Indies for examining the attesting witnesses. That commission being once duly returned with the necessary evidence, taken in the cause of the due execution and attestation; the court would then allow the original will to be established on production of the authenticated copy.

*Bridge v. Yates*, 12 Sim. 645.

### JOINT TENANCY.—TENANCY IN COMMON.—WILL.

The testator gave one-fourth of his residuary estate to trustees, in trust for his wife for her life, and after her decease, in trust, to be equally divided among all his children who should be then living, and the issue of such of them as should be then dead; such issue taking only the part or share which his or her deceased parent would have been entitled to if living. The testator left his wife and three children living at his death. One of these children, a daughter, died in 1823, leaving issue. The widow herself died in 1838; a question then arose, whether the grand children took their mother's one-third share *inter se*, as joint tenants, or as tenants in common.

The *Vice-Chancellor of England* held, that the words "to be equally divided," clearly created a tenancy in common among the testator's children, so that the grand children took their parents' share as tenants in common with the testator's surviving children. As to this point there appeared to be no dispute between

\* It appeared, moreover, that only one of the attesting witnesses had gone before the Registrar of the Court of St. Kitt's and proved the will;—so that even if all that had been done there, had been done in this country, the *Vice-Chancellor* held that the Court of Chancery could not have established the will.

the parties. "But," His Honour observed, "the testator speaks of no division amongst the issue (i. e. the grand children) themselves; and therefore my opinion is, that they take their parents' share as joint-tenants with each other."

*Ex parte Lineham, in re Hennessy, 1 Jones and Latouche, 29.*

#### LUNACY.—ALLOWANCE TO THE HEIRS OF THE LUNATIC.

An allowance made by the Lord Chancellor in lunacy to the necessitous heir of the lunatic, is not to be treated as matter of right or property, upon which a creditor of the heir can make a claim. Thus, in the above case, James Hennessy the heir-at-law, and sole next of kin to the lunatic, enjoyed an allowance for the support and maintenance of himself and family, out of the lunatic's estate. The Master had reported that this allowance ought to be the annual sum of 350*l.* The present petition alleged, that the Master had at first considered 200*l.* per annum sufficient, but that he had subsequently increased it to 350*l.*, on the representation of the heir that he was deeply in debt, and was desirous of keeping up some policies of insurance effected on his life for the benefit of his creditors. It appeared that Lineham, one of these creditors, had actually taken from the heir a mortgage of the lunatic's estate, to secure the sum of 3,000*l.* with interest, and as a further security had effected an insurance on his life. Upon the death of Lineham, his personal representatives now petitioned the court, that the heir's allowance might be increased, so as to enable him to pay the premiums on the insurance, and the interest on the debt; or that a competent portion of the allowance of 350*l.* per annum should be applied for those purposes.

The Lord Chancellor (*Sugden*) said: "It is impossible for me to give anything to the applicants. I have no jurisdiction to make such an order as is now asked. Here is a man who assumes an improper dominion over the estate of the lunatic, and affects to deal with it as if he were the owner. And now a creditor of his asks me to make an order with respect to it, for his own benefit. Whether upon any occasion I might think it right to take this allowance from him, if he was to abuse the confidence which the court has in him, is a different question: but I cannot give it to his creditors: it is given to him in order to enable him to live in a respectable manner. The application is quite novel; and I must therefore dismiss the petition with costs."

*Abraham v. Newcombe, 12 Sim. 566.*

#### INFANT FEME COVERT.—PRACTICE.

We notice this case on account of the con-

flict which has hitherto subsisted between the decisions of the Master of the Rolls and the Vice-Chancellor of England, upon the point in question. In *Gullin v. Gullen*,<sup>c</sup> his Honour took the consent of a married woman under 21 years of age, to the payment to her husband by the court, of a sum of money to which she was entitled. But Lord Langdale in *Stubbs v. Sargson*<sup>d</sup> declined to follow this precedent. The point being now again raised before the Vice-Chancellor, his Honour concurred in the opinion of the Master of the Rolls. It may therefore be deemed a settled point, that coverture confers no additional capacity on a married female infant, with regard to the disposition of her property; and that, as an infant feme sole is clearly incompetent to withdraw her property from the jurisdiction, so an infant feme covert cannot waive her equity to a settlement out of her funds in court, or consent during her minority to the payment of such funds to her husband.

*Nash v. Flynn, 1 Jones and Latouche, 175.*

#### ESCROW.—WHAT ESSENTIAL TO ITS CONSTITUTION.

Lord Chancellor *Sugden*. "It is quite settled that it is not necessary, in delivering an instrument as an escrow, to say that it is delivered as an escrow. I have always considered it as a clear point, that if the instrument be delivered upon condition, that constitutes it an escrow. I do not say that you are not to give to the agreement of the parties its full effect; but unless the case provided for arises on which the instrument is to operate as a deed, it does not exist as a deed at all. The party must bring himself within the terms of the condition. On the other hand, where the instrument has been acted on by the parties as a deed, the court would be anxious to hold that the event upon which it was to become a deed had happened, and that it had ceased to be an escrow."

#### BUSINESS OF THE COURTS.

##### Queen's Bench.

Thursday . . . Feb. 6  
and daily to . . . } Special Juries.  
Saturday . . . 15

*Hilary Term, 8 Vict. Jan. 23, 1845.*

This Court will, on Saturday the 1st, and on Monday the 3rd, Tuesday the 4th, Wednesday the 5th, and Saturday the 8th days of February next, and also on Monday the 10th day of February next,

<sup>c</sup> 7 Sim. 236.

<sup>d</sup> 2 Beav. 496.

<sup>c</sup> An escrow is a deed delivered to a third party, to be the deed of the party making it upon a future condition when a certain thing is performed, and then it is to be delivered to the party to whom made. It is to be delivered to a stranger, mentioning the condition. *Co. Litt. 31, 36.*

<sup>b</sup> *Co. Litt. 138 a, and Oates v. Jackson, 2 Str. 1172*, were cited by the learned judge as conclusive authorities on the point.

and the two next following days, hold Sittings, and will proceed in disposing of the business in the Crown, Special, and New Trial Papers, and giving judgment in cases then pending. A selection will be made from the Special Paper and notice given.

By the Court.

### Common Pleas.

London Adjournment day, Monday Feb. 17.

### Exchequer of Pleas.

Sittings after Hilary Term, 1845.

#### MIDDLESEX.

Saturday . . .	Feb. 1	Common Juries.
Monday . . .	3	} Customs & Com. Juries.
Tuesday . . .	4	
Wednesday . . .	5	
Thursday . . .	6	} Common Juries.
Friday . . .	7	
Saturday . . .	8	Stamps and Com. Juries.
Monday . . .	10	} Customs & Com. Juries.
Tuesday . . .	11	
Wednesday . . .	12	} Special Juries.
Thursday . . .	13	
Friday . . .	14	
Saturday . . .	15	

#### LONDON.

Monday . . .	Feb. 3	To Adjourn only.
Monday . . .	17	Adj. Day, Com. Juries.
Tuesday . . .	18	} Common Juries.
Wednesday . . .	19	
Thursday . . .	20	
Friday . . .	21	} Special Juries.
Saturday . . .	22	
Monday . . .	24	
Tuesday . . .	25	
Wednesday . . .	26	
Thursday . . .	27	
Friday . . .	28	

The Court will sit at ten o'clock.

Hilary Term, 8 Vict., Tuesday 28th Jan. 1845.

This Court will, on Monday the 10th day of Feb. next, and on the following days, namely, Tuesday the 11th, Wednesday the 12th, Thursday 13th, Friday 14th, Saturday 15th, Monday 17th, Tuesday 18th, Wednesday 19th, Thursday 20th, Friday 21st, and Saturday the 22nd days of the said month, hold sittings, and will proceed in disposing of the business then pending in the New Trial, and Special Papers.

By the Court.

Read in Court.

SAMUEL DANE, Master.

### PERPETUAL COMMISSIONERS.

[January 1845, with dates when gazetted.]

Dene, Charles John, Barnstaple, Devon, Attorney and Solicitor. Jan. 17.  
Smith, Lawrence, Hurstperpoint, Sussex, Gent. Jan. 21.  
Handcomb, Edward, Ampthill, Beds, Gent. Jan. 22.

### BANKRUPTCY—DIVIDENDS DECLARED.

From 31st Dec. 1844, to 24th Jan. 1845, both inclusive.

Alfred, T., 26, Harrow Road, Paddington, Victualler. Div. 4d.  
Allen, J. H., Porthcawl, Timber Merchant. Div. 2s. 1d.  
Allinson, R., Whitehaven, Cumberland, Ironmonger. Div. 3s. 4d.  
Bailey, E., 13, Mount Street, Grosvenor Square, Upholsterer. Div. 4s. 6d.  
Baker, J., Romsey, Hants, Grocer. Div. 5s.  
Balls, J., Holloway Road, Islington, Livery Stable Keeper. Div. 3s.  
Banks, J., Liverpool, Tallow Chandler. Div. 4d.  
Batty, W., Kingston-upon-Hull, Carrier. Div. 1s.  
Brez, J. J., Chester, Tailor and Draper. Div. 10s.  
Broome, W., Oxford Street, Linen Draper. Final div. 3d.  
Broughton and Garnett, Nantwich, Bankers. (Div. on separate estate of C. D. Broughton, 20s.)  
Brown, G., Carlisle, Draper. Div. 9d.  
Buckton, J., Darlington, Durham, Grocer. Div. 3s. 4d.  
Butterworth, T. W., Bedford Street, Hulme, Lancaster, Draper. Div. 1s. 10d.  
Canning, H. J., Wood Street, Cheapside, Scotch Warehouseman. Div. 10d.  
Clarke, J. C., Waler Lane, Great Tower Street, Wine Merchant. Div. 9d.  
Cockburn, J., New Broad Street, London, Merchant. Div. 3d.  
Cottam, G., and W. Osburn, jun., Leeds, York, Wine and Spirit Merchants. Div. 3d. (on separate estate of G. Cottam, div. 2s. 6d.)  
Coupland, J., and F. Duncan, Liverpool, Merchants. Div. 11d. (on separate estate of J. Coupland div. 5s., and on separate estate of F. Duncan, div. 14s. 7d.)  
Currie, R., Newcastle-upon-Tyne, Bookseller and Stationer. Div. 4s.  
Daintry, J. S., J. Ryle, and W. R. Ravenscroft, Manchester, Bankers. Div. on separate estate of J. Ryle, 2s. 6d.  
Davison, J., Marton, York, Farmer. Final div. 3d.  
Dixoo, J., Sheffield, Linen Draper. Final div. 2s. 4d.  
Donkin, T., Sydney Street, Cambridge, Victualler. Div. 2d.  
Drew, R., Builders' Arms Public House, Compton Street, Regent's Square, Victualler. Div. 6d.  
Dyson, J., Abbey Dale Works, Sheffield, Scythe Manufacturer. Div. 7s. 6d.  
Edwards, E., 35, City Road, Draper. Div. 8d.  
Fairclough, W., and E. Swainson, Liverpool, Merchants. Div. 7d.  
Flersheim, L., Birmingham, Merchant. Div. 7d.  
Foster, E. H., Hathern, Leicester, Tanner. Div. 2d.  
Graydon, C., St. Ann's Place, Limehouse, Ship Chandler and Timber Merchant. Div. 6d.  
Groves, G., Wick and Abson, Miller. Div. 2s.  
Grundy, J., jun., Ramabottom, Lancaster, Woollen Manufacturer. Div. 6s. 8d.  
Hadfield, S., Manchester, File Manufacturer. Div. 10s. 7d.  
Hall, W., Tredington, Worcester, and R. Rainbow, Safford-upon-Avon, Corn and Coal Merchants. Final div. 2d.  
Hopper, W., Great Queen Street, Lincoln's-Inn-Fields, Carpet Warehouseman. Div. 2d.



- Harford, J., and W. W. Davies, Iron Founders and Merchants. Div. 10d.
- Harman, J., Meadow Bank Brewery, Whitefriars, London, Common Brewer. Div. 1s. 9d.
- Hayton, W., Sunderland, Durham, Coal Fitter. Final div. 1½d.
- Hedderly, J., Nottingham, Druggist. Final div. 1s. 5½d.
- Hilton, J., Tipton, Leather Seller. Div. 11d.
- Holmes, E., 3, King Street, Cheapside, Warehouseman. Div. 3s. 8d.
- Hurley, J., Woburn, Bedford, Plumber, &c. Div. 4d.
- Jacob, A., Manchester, Merchant. Div. 2½d.
- Johnston, E., jun., and T. Manley, Whitehaven, Cumberland, Sugar Refiners. Final div. ¼d. of a farthing.
- Kesley, S., & J. S., Long Lane, and Wild's Rents, Bermondsey, Tanners. Div. ¼ of a penny.
- Kerr, H., Mulgrave Place, Woolwich, Tailor. Div. 2½d.
- Lediard, T., Cirencester, Scrivener. Div. 1½d.
- Mills, W. F., Hart Street, Mark Lane, Merchant and Gun Maker. Div. 6s. 6d.
- Monteith, J. W., Liverpool, Teacher of Navigation. Div. 4d.
- Morton, T. M., 104, Bishopsgate Street Within, Eating Housekeeper. Div. 5d.
- Mott, W., 278, Regent Street, Laceman. Div. 2s. 2d.
- Noel, G., and W., Jermyn Street, St. James's, Boot Makers. Div. 3s. 6d.
- Oliver, J., J. York, and R. Harrison, Tipton, Stafford, Coal and Iron Masters. Div. 3s.
- Palliser, R., Moorgate Street, Saddler. Div. 5d.
- Pennington, W., Bedlington, Durham, Miller. Final div. 1s. 2½d.
- Perkins, W., St. Wolloos, Ship Builder. Div. 1d.
- Porter, J., Barnsley, York, Callenderer. Final div. 12s. 6d.
- Portway, A., Braintree, Essex, Tea Dealer. Div. 3s. 6d.
- Pow, J. B., Newcastle-upon-Tyne, Ship and Insurance Broker. Final div. 1s. 7½d.
- Prior, J., and H. Brady, Kingston-upon-Hull, Brush Manufacturers. Div. 2s. 6d.
- Pullen, R., Selby, York, Flax Merchant. Final div. 4½d.
- Reynolds, E., Merton, Surrey, Silk and Woollen Printer. Div. 2s. 11½d.
- Rodham, T., Newcastle-upon-Tyne, Grocer. Final div. 9½d.
- Roberts, E., Oswestry, Draper and Grocer. Div. 2½d.
- Roberts, R. G., Liverpool, Timber Merchant. Final div. ¼ of a penny.
- Scholefield, J., Cheapside, Cutler. Div. 4s. 1½d.
- Schoonswar, G., late of Ferriby, Kingston-upon-Hull, and H. Schoonswar, late of Sculcoates, York, then of Island of Mauritius, and formerly of Kingston-upon-Hull, Merchants. Div. 8d.
- Sharp, C., and W. D. Clarke, Berners Street, Upholsterers. Final div. 7d.
- Simmons and Brook, Bermondsey, Ironfounders. Final div. 5s. 9½d.
- Stairie, W., Cutler Street, Houndsditch, Carpenter. Div. 6½d.
- Stearn, D., Cardiff, Builder. Div. 1s.
- Sugden, J., and D. Springfield, Kirkburton, and of Huddersfield, York, Fancy Cloth Manufacturers. Div. 10s.
- Tisoe, H., Hertford, Carpenter. Div. 2s. 11d.
- Traggar, A., and T. C. Lewis, Cheapside, Print and Music Sellers. Div. 20s.
- Tuck, E., 70, Haymarket, Silversmith. Div. 5d.
- Waddell, J., Lime Street, and Lendenhall Street, Ship Owner and Insurance Broker. Div. 9d.
- Waddell, W., Liverpool, Merchant and Ship Broker. Div. 6d.
- Wagstaff, W., Liverpool, Cabinet Maker. Div. 11d.
- Walker, W., Walmsley, Lancaster, Dealer and Chapman. Div. 10½d.
- Ward, J., Upper Ground Street, Christchurch, Iron Founder. Div. 1s. 8d.
- Watson, T., Saracen's Head, Camomile Street, Victualler. Div. 2s. 4d.
- Whitmarsh, T., Sussex Hotel, Tunbridge Wells, Hotel Keeper. Div. 3d.
- Wicks, J., Trowbridge, Clothier. Div. 2d.
- Wilson, J., Newcastle-upon-Tyne, Linen Manufacturer. Final div. 1s. 3½d.

## PRICES OF STOCKS.

Tuesday, Jan. 28th, 1845.

Bank Stock div. 7 per Cent.	214½ a 14 a 1
3 per Cent. Reduced Annuities 100½	100½ a 14 a 1
3 per Cent. Consols Annuities	99½ a 100
3 per Cent. Annuities, 1736	98½
New 3½ per Cent. Annuities	104½ a 14 a 1
Long Annuities, expire 5th Jan. 1860	12½ a 14
Ann. for 30 years, expire 10th Oct. 1859	11½ a 12
5th Jan. 1860	11½ a 12
India Stock, 10½ per Cent.	285½
India Bonds, 3 per cent. 1000l.	78s. pm.
Ditto under 1000l.	80s. pm.
3 per Cent. Annuities, 1751	98½
3 per Cent Consols for Acct., 27 Feb.	100½ a 100 a 1
India Stock for Account, 27 Feb.	286½
Commissioners for the Reduction of the National Debt, purchased at 100½ 3, per Cent. Reduced.	
Exchequer Bills, 1000l. 1½d.	66s. a 5s. a 7s. pm.
Do. 500l.	64s. a 7s. pm.
Do. small	64s. a 6s. pm.

## THE EDITOR'S LETTER BOX.

We are obliged to A. for the case of alleged privilege which he has sent us.

The observations of "Alpha;" *Civis A.*; and "An Attorney," shall be attended to.

We think that both parties having been heard on the Metropolis Buildings Act, it will not be necessary to insert the rejoinder of H. S. F., unless something new should arise on the subject.

We think an insurance could be legally effected by husband and wife jointly, the premiums being paid by the husband, and the money payable to the survivor.

We shall endeavour to find room for the substance of the report of the annual meeting of Manchester Law Association.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 8, 1845.

—“Quod magis ad nos  
Pertinet, et necesse malum est, agiturus.”

HORAT.

### SHORT FORMS IN CONVEYANCING.

We last week mentioned that we had reason to believe that the Transfer of Property Act had been referred to certain eminent conveyancers, with the view of amending its provisions. We have long pointed out that some such step as this would be absolutely necessary, and we shall await the result of the deliberations of the gentlemen referred to with much anxiety. They will have a difficult and delicate task to perform, and we shall pay respectful attention to anything they may propose. We cannot but think, that for the reasons we have given, it will be found absolutely necessary, as a preliminary step, to repeal the stat. 6 & 7 Vict. c. 76, having reference, of course, to anything that may have been done under it. In the mean time, another question has assumed perhaps a different form from that which it has hitherto taken. There have been, for many years past, various publications which have given to the profession short forms of conveyances. There can be no doubt that during the last twenty years, at the least, there has been a tendency to shorten these forms. In many cases express instructions have been given to the conveyancer to draw a deed as concisely as possible, and in all others there has been a laudable desire on the part of both branches of the profession, as far as was safe and practicable, to shorten the forms usually employed. But then comes the grave and important question—what is safe? and what is, under the circumstances, prac-

ticable? These forms contain the wisdom of ages on the subject; every clause, not to any every word, has been inserted for a good reason; and who shall be able to determine what can be safely omitted, or how a form can be pared down? It is easy for any student, after six months' pupillage, looking at a deed in one particular light, to strike out this expression as tautologous, or omit that clause as useless. But be it always remembered, that unless the particular circumstances could be recalled which occasioned the use of this expression or that clause, it is impossible with safety to proceed on this plan. Nothing is more common, in the ardour and enthusiasm, but also in the inexperience of youth, than for a young practitioner, whether at the bar or as a solicitor, at the commencement of his practice, to deem to destruction many of these familiar usages: "When I begin practice," he exclaims, with generous zeal, "you shall see what I will do; none of this useless verbiage will I use! I will draw a deed in quite another fashion." And accordingly he falls to; he invokes the aid of that last-created goddess *Utility*, and sacrifices a whole hecatomb of words at her altar. Out goes this as unnecessary; down falls that as useless. One is a relic of the feudal system,—*strike it out*; another is a misstatement of the law, and likely to do more harm than good,—*strike it out also*. Sad havoc indeed does his ruthless pen commit, and he surveys the wreck he has made with the utmost satisfaction. With a proud feeling, and a sort of self-devoted look, he hands his draft to his client, who goes away delighted. By-and-by, how-

ever, other transactions come before him ; another aspect of the same subject is presented ; he has to settle or advise on the same common forms with a view to that. He begins to find that the words he had struck out had, after all, some meaning ; that the clause he had thrown over so hastily *was* of some use ; that although times have altered, and circumstances have changed, and the feudal system is no more, there *may be* a necessity for the very form which he had the most readily and without any doubt abandoned. Slowly he retraces his steps ; with pain and mortification he restores all that he had struck out ; line after line, clause after clause, is replaced ; he pulls down and throws behind the fire the goddess Utility, and enthrones his despised Precedent Book in her stead : for he begins to reflect, with some feeling of dismay and alarm, that his first transaction is *unsafe*, and that the smiles of his client may be turned into tears and upbraiding. All this, we say, is not an uncommon occurrence in the profession ; nay, we will venture to say it has happened to a great many : and it is in some respects honourable to the feelings of a young man.

These remarks have been called from us, somewhat unwillingly, by the appearance of a work by Mr. Sweet, which would be unimportant if it was not represented to be a supplement\* to a work which we believe has been popular in the profession. It is published "as a supplement to the ninth volume of Bythewood and Jarman's Conveyancing, for the use of such practitioners as, *for want of experience or of time to study* the recent 'Act to Simplify the Transfer of Property,' *may require a guide to its construction and operation.* This seemed to be the more desirable, as a notion had got abroad that the act will effect a considerable change in the forms of conveyances."

Let us see, therefore, what Mr. Sweet recommends to those who require a guide, 'from want of experience or time.' "The forms of conveyances at present in use," he says, "will not, however, be materially varied." "The reference, in conveyances

of freehold estates, to the statute for dispensing with a lease for a year," and "the powers to trustees to give discharges, will not be required after the expiration of the present year." (Page 9.) And according to this recommendation, in the forms which accompany this edition of the act these clauses have been omitted. The profession, whether from want of experience or time we cannot say, has not, however, been disposed to follow these recommendations as we have already had occasion to notice.

Let us, then, turn to the forms themselves. Mr. Sweet has here given forms of a conveyance of freeholds in fee to uses to bar dower ; of a marriage settlement ; and of a reconveyance of freeholds by the executors of the mortgagee. In these forms we observe various omissions and curtailments of the usual forms, of which the following may be taken as an example. Instead of the usual limitation in settlements of real estate to the intent that the wife may receive a rent-charge, with powers of distress and entry, Mr. Sweet gives the following :—

"To the use and intent that the said [intended wife] may receive, in lieu of her dower and freebench in any of the said [settlor's] lands, out of the rents and profits of the said hereditaments and premises, the yearly sum or rent-charge of £ during her life, by equal quarterly payments, on the four usual quarter-days, the first of such payments to be made on such of the said days as shall first happen after the death of the said [settlor], with power for the said [intended wife] and her assignees, whenever such rent-charge shall be in arrear for twenty-one days, by entry and distress upon, or for a caption of the rents and profits of the said hereditaments and premises, to recover the same and any intermediately-accrued arrears thereof."

Now if our readers, who may be so disposed, will take the trouble to compare this with their Precedent Books containing the forms used by Mr. Butler, Mr. Brodie, and others, they will find some important omissions. Among others, it has been usual to say that the rent-charge shall be "free of all deductions ;" to state that the rent-charge shall be in lieu of dower or feoffment "out of all freehold, or copyhold, or customary lands, whereof the intended husband now is, or at any time or times during the said intended coverture may be, seised," &c. ; to specify the days on which, and the place where, the rent-charge is payable ; and to insert a whole clause, which Mr. Sweet entirely strikes out,

\* The stat. 7 & 8 Vict. c. 76, intituled, "An act to Simplify the Transfer of Property," with a Commentary, By George Sweet, Esq. of the Inner Temple, Barrister-at-law. Intended as a Supplement to the Third Edition of Jarman and Bythewood's Conveyancing. Sweet.

authorizing the wife to enter and take possession of the lands themselves, if the rent-charge should be forty days in arrear. Now it is not necessary to say that the power given by Mr. Sweet might not in many cases answer the purpose; but our readers, before they can adopt it, must consider whether, under all imaginable cases which have hitherto occurred, it would be sufficient, and whether, if they adopted it and it turned out insufficient, they would not be responsible for departing from the long-settled and usual form; whether, in fact, they would be safe if they used the short instead of the long form. This is the question to be resolved; and the importance and gravity of the responsibility involved have induced us to bring it at once and at this interesting juncture before the profession. It may be quite true that the usual form may be insufficient, but no responsibility of the nature to which we allude is involved in it.

We might examine in the same manner the powers of leasing and of sale and exchange which Mr. Sweet proposes to substitute for those which have been used for the last two centuries: and here we should have an easier task. Every line of these forms has called forth a decision. Cases start up to the memory on almost every word. And we are not prepared hastily and summarily to depart with a single grain of protection in this delicate and difficult branch of the law which the old forms give us. Without meaning any disrespect to Mr. Sweet, we must have much greater authority than his for abandoning the settled wisdom of ages; and for our part we are quite content to have our purchase deed or our settlement a little longer, with safety to ourselves and clients, than to run any, even the slightest, risk in the matter.

How far the fault which we have thought it our duty to bring under our reader's notice infects the edition of Mr. Bythewood's Conveyancing, which has been committed to Mr. Sweet's charge, we shall not now inquire. This, however, we shall return to. In the mean time, we have the less pain in pointing out Mr. Sweet's errors, as he does not appear to be sensible of the weight of the task he has taken upon himself, but rushes rashly on, with a thorough confidence in his own ability to set up as a teacher. Thus much we feel compelled to say.

## AMENDMENT OF THE TRANSFER OF PROPERTY ACT.

It will be seen that, in answer to a question from Lord Campbell, the Lord Chancellor, on Tuesday last, admitted that this act was defective, and that he was about to bring in a bill to amend it, which his lordship stated would be ready in a few days. We need not call the attention of our readers to this important statement, nor say that the subject demands the vigilance of the profession.

## DECISION OF THE BENCHERS OF LINCOLN'S INN

ON A

### CHARGE OF MAL-PRACTICE.

Our readers are probably aware that a barrister of the Society of Lincoln's Inn was accused, some time ago, in a public journal, of mal-practice in his profession, by circulating two papers among solicitors: the first being a printed "Table for making Wills," specifying the terms on which he proposed to draw wills and attend their execution; and the second, a letter, in which, after referring to the printed table, as shewing the "fixed fees" on which he would conduct business, he proposed to allow a commission of 5*l.* per cent. on any sum forwarded to him by the persons he addressed.

It appears that the Benchers directed their solicitor to make inquiries into the fact of the alleged circulation of these papers. Amongst others, inquiry was made at the Incorporated Law Society, where it was probable that if such papers had been circulated they would have been seen by some of the thirteen or fourteen hundred members, in town and country, of that society, but no such extraordinary documents had been heard of.

It was then suggested that application should be made to the provincial law societies, to learn whether they had any knowledge of such circulars. The committee of the Incorporated Law Society caused letters to be sent to every other society throughout the country, making similar inquiries, and the result was, that no such circulars had been seen or heard of.

Although we usually abstain from mentioning the names of professional men

unnecessarily, it is now proper, in justice to the party accused, to state that the very serious imputation in question was made against Mr. *George Farren*, a Chancery barrister. We now learn that the Benchers, having investigated the charge, and allowed ample time to substantiate it, and having heard the parties upon the matter, have recorded their decision in the following resolution:—

"*Lincoln's Inn*.—At a special council there held, the 30th day of January, 1845, to consider and finally dispose of the inquiry into the case of Mr. *George Farren*, a barrister of this society, and also to consider a letter received from Mr. *Farren*, dated the 27th January, 1845:—

"Resolved, That Mr. *Farren* having positively denied the charge against him, and the bench being of opinion that the evidence obtained has not established the same—Resolved, that the charge be now dismissed.

"Resolved, That a copy of this resolution be communicated by the steward to Mr. *Farren*.

"(A copy.)

"*MR. DOYLE*, Steward."

## ANECDOTE OF LORD CHIEF JUSTICE ELLENBOROUGH.

SERGEANT TALFOURD has published an amusing book of *Vacation Rambles*. When that agreeable time approaches we may advert to it more fully. In the mean time, we extract an anecdote of Lord Ellenborough:—

"It was," says the learned serjeant, "in those true Tory days, now for ever fled, after the period 'when spies and special juries were unknown,' and before these days, when spies have grown historical, and special juries, even in the Exchequer, give verdicts against the crown, that the celebrated Henry Hunt, in his character of redresser of wrongs, became the champion of an idle lad named Dogood, who had been imprisoned on some pretence as idle as himself, and assuming that the Lord Chief Justice sat for the redress of all grievances, attended during one long day's sharp sitting at Nisi Prius to address Lord Ellenborough on the subject's wrongs. He found no opportunity, however, on which even his consummate impudence could seize till the business closed; for Lord Ellenborough, who had come down after an interval, during which his substitutes had made slow progress, was rushing through the list like a rhinoceros through a sugar plantation, or a common serjeant in the evening through a paper of small larcenies; but just as he had nominated the plaintiff in the twenty-second cause, which the plaintiff's

attorney had thought safe till the end of a week, and was about to retire to his turtle, with a conviction of having done a good morning's work, an undeniable voice exclaimed, 'My lord!' and Mr. Hunt was seen on the floor, with his peculiar air, perplexed between that of a bully and a martyr. The bar stood aghast at his presumption; the ushers' wands trembled in their hands; and the reporters, who were retiring after a very long day, during which, though some few city firms had been crushed into bankruptcy, and some few hearts broken, by the results of the causes, they could honestly describe as 'affording nothing of the slightest interest except to the parties,' rushed back and seized their note-books to catch every word of that variety of rubbish which is of 'public interest.' My lord paused and looked thunders, but spoke none. 'I am here, my lord, on the part of the boy Dogood,' proceeded the undaunted Quixote. His lordship cast a moment's glance on the printed list, and quietly said, 'Mr. Hunt, I see no name of any boy Dogood in the paper of causes,' and turned towards the door of his room. 'My lord!' vociferated the orator, 'am I to have no redress for an unfortunate youth? I thought your lordship was sitting for the redress of injuries in a court of justice.' 'Oh! no, Mr. Hunt,' still carelessly responded the judge, 'I am sitting at Nisi Prius, and I have no right to redress any injuries except those which may be brought before the jury and me in the causes appointed for trial.' 'My lord,' then said Mr. Hunt, somewhat subdued by the unexpected amenity of the judge, 'I only desire to protest.' 'Oh! is that all?' said Lord Ellenborough; 'by all means protest, and go about your business.' So Mr. Hunt protested, and went about his business; and my lord went unruffled to his dinner; and both parties were content."—Vol. ii. 94—96.

## THE LAW OF ATTORNEYS.

### STRIKING OFF THE ROLL.

A SOLICITOR was employed under the following circumstances:—

A lady, Miss West, had placed great confidence in her solicitor, and had been employed by her in a suit in chancery. He requested her to assist him in obtaining money, which he said he wanted to lend on mortgage. The result of this transaction was, that the solicitor (Martin) obtained 1,000*l.* from a bank, of which Miss West received 50*l.*, and Martin 950*l.* Miss West having subjected herself by giving a bill and certain property by deed to the repayment of the 1,000*l.* Martin afterwards received other money on behalf of Miss West, out of which he repaid the money advanced by the bank, but still held a considerable balance in his hands, which Miss West in vain applied for. He was afterwards arrested at Deal upon a writ of *ne exeat*, issued by order of the Lord Chancellor, and seeking to obtain the benefit of the Insolvent Debtors'

Act, he was ordered to be imprisoned for a period of ten months, which expired in April last. On an application to strike Martin off the rolls, Lord Langdale, M. R., said, after recapitulating at greater length these facts, "Except in making the repayment of parts of the sums which he received, it appears to me that every part of the conduct of Mr. Martin in the matters in question was improper, and I think, on the examination of the matter and of every affidavit, that he fraudulently abused the confidence placed in him by his client, and endeavoured to effectuate and continue the fraud by misrepresentations, in a manner and under circumstances which make it my imperative duty to declare, so far as depends on me, that he is not to be permitted to act as a solicitor, and to continue in a situation which may enable him to conduct himself towards other clients in the same manner. It is undoubtedly the duty of the court to protect solicitors in the fair and honest discharge of their difficult and delicate duties, but when a solicitor is found to have availed himself of his honourable and confidential position, for the purpose of taking advantage and defrauding his clients, it is not less the duty of the court to withdraw from him those privileges, and that certificate of character which are afforded by his being permitted to remain on the roll of solicitors." *In re Martin*, 6 Beav. 337.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

PRACTICE. — DEFENDANT ABROAD. — SUBSTITUTED SERVICE.

*Where a defendant, who is out of the jurisdiction, has employed a person, who is within the jurisdiction, to act for him in the subject matter of the suit, the court will order service of subpoena to appear and answer, and also of an injunction, on that person to be good service on the defendant.*

*Seemable, that if the fact of agency is to be derived from the admissions of the alleged agent to the plaintiff's solicitor, an affidavit ought to be made by the latter, denying collusion with the former.*

THE defendant, Mary Rose Vibart, is residing at Boulogne, out of the jurisdiction of this court. On the 11th instant, the Vice-Chancellor Knight Bruce granted an injunction, on the plaintiff's application, to restrain the said defendant from transferring the sum of 1,900*l.* 3*l.* per cent. annuities, and 3,000*l.* 3*l.* per cent. annuities, and any other sum of stock standing in the name of Henry Vibart, the testator in the plaintiff's bill mentioned, in the

books of the Governor and Company of the Bank of England, and all other trust monies in the bill mentioned, into the names of any other person than the plaintiff Elizabeth Murray, and the defendants Mary Rose Vibart and William Rose Campbell, the trustees named in the said testator's will.

Mr. Anderson moved, *ex parte*, that service of the subpoena for the defendant M. R. Vibart to appear and answer the bill, and also of the said injunction on William Morgan Bennett, of Raymond's Buildings, Gray's Inn, solicitor of the said M. R. Vibart, may be deemed good service on her. He read passages from an affidavit containing a correspondence between the plaintiff's solicitor and Mr. Bennett. The latter, in a letter dated the 30th of December last, said: "Mrs. Vibart has forwarded to me your letter of the 27th instant," &c.; "she has instructed me to do what is necessary on her behalf." He (Mr. Bennett) also admitted that the notices to the Bank of England to transfer the stock and pay the dividends was given by him, on the part of Mrs. Vibart.

The Lord Chancellor.—Have you any evidence of the defendant's recognition of the agency? The two solicitors may be playing into each other's hands. Have you an affidavit from the plaintiff's solicitor that he is not acting in concert with Mr. Bennett? Parties here, in the absence of a party abroad, may agree to acts implying authority from the absent party.

Mr. Anderson.—Mr. Bennett's letters contain intrinsic evidence of his having been instructed by the defendant as he says; for he could not otherwise know the contents of the letters written by the plaintiff's solicitor to Mrs. Vibart. He says: "Mrs. Vibart has forwarded to me your letter, and in replying to it, I cannot but regret that you acted with such precipitancy," &c. "On receiving your present letter, Mrs. Vibart instructed me," &c.

The Lord Chancellor.—I think that will do.

Mr. Anderson cited *English v. Hendrick*,<sup>a</sup> *Kinder v. Forbes*,<sup>b</sup> *Weymouth v. Lambert*,<sup>c</sup> *Hobhouse v. Courtney*,<sup>d</sup> and *Webb v. Salmon*.<sup>e</sup> In this last case the proof of agency was not strong enough to support the application. But the application was granted in *Hobhouse v. Courtney* on the intrinsic evidence of agency, and that evidence was much stronger in the correspondence in the present case.

The Lord Chancellor repeated that he thought the agency was proved, but he recommended that a letter be written by the plaintiff's solicitor to the defendant at Boulogne, apprising her of this application. In the mean time, his lordship would look into the cases cited.

On a subsequent day, Mr. Anderson said a letter had been written to Mrs. Vibart, as his lordship suggested, and he had an affidavit of the plaintiff's solicitor, verifying the corres-

<sup>a</sup> 6 Madd. 205.

<sup>b</sup> 2 Beav. 503.

<sup>c</sup> 3 Beav. 223.

<sup>d</sup> 12 Sim. 140.

<sup>e</sup> 3 Haro. 261.

pondence, and denying any collusion between him and Mr. Bennett.

The Lord Chancellor said he had not had time to examine the cases.

His lordship, on the Monday following, said he had looked into the cases, especially *Hobhouse v. Courtney*, in which the Vice-Chancellor of England elaborately reviewed all the prior cases, and the principle he collected from them was, that when a party residing abroad employed a person residing here in the subject matter of the suit, service of process on that person ought to be held good service on the party abroad. He further observed, that he was satisfied, by the affidavits in the case, that the agency of Mr. Bennett for the defendant in respect of the subject of the suit was sufficiently established to warrant the court in granting the order.

*Murray v. Vibart*, at Westminster, January 16, 18, and 20, 1845.

### Rolls Court.

[Reported by SAMUEL MILLER, ESQ., Barrister at Law.]

#### WILL, CONSTRUCTION OF.—TRUSTS FOR SALE.

*Where a will contains positive directions for sale, the court will not, upon the ground of sacrifice, discharge an order for sale; but, under special circumstances, will direct a reference to the Master, to ascertain whether the property can be sold with advantage to the parties beneficially interested.*

THE testator in this cause directed that certain estates, devised by him to trustees, should be sold as soon as conveniently might be after his decease; and accordingly, on the hearing of the cause, the usual order for sale was made. In pursuance of this order, the property was put up for sale, but the reserved bidding being 8,000*l.*, and the highest bidding being only 1,400*l.*, it was not sold. This was in 1841; and the Master having made his report under the decree by which the facts above stated appeared, the cause came on for further directions in 1842, when the court continued the order for sale, and directed that the trustees should receive the rents until the property should be sold, and apply them according to the directions of the testator's will. The property was let on a lease which would expire at Lady-Day next, and as there was still little chance of the property being sold except at a great sacrifice, the present petition was presented, by which it was prayed that it might be referred to the Master to ascertain whether it would be for the benefit of the parties beneficially entitled to the property that the sale should be postponed, and if he should be of that opinion, then that he might receive proposals for granting a further lease of the premises, for such term and at such rent as he might consider most beneficial.

Mr. Montagu, for the petitioners, said, that the property consisting of a mine, and being at present much deteriorated in value, a sale at the present time must be productive of considerable loss to the parties interested, all of whom were anxious that the prayer of the petition should be granted; but some of them being minors, the sale could not be postponed without the sanction of the court.

Mr. Perry, for the trustees, consented.

The Master of the Rolls said it was the duty of the court to carry into effect the intentions of the testator, not to evade the performance of trusts created by him; and all that he could do was to order that it should be referred to the Master to ascertain whether the property could now be sold with advantage to the parties beneficially entitled to it.

*Crombie v. Maclean*, January 24th, 1845.

### Queen's Bench.

(Before the Four Judges.)

#### ADMISSION OF ATTORNEY.—SERVICE OF CLERKSHIP.—BARRISTER.\*

*J. W. B. served three years under articles of clerkship to an attorney, and subsequently became a member of an inn of court and was called to the bar, where he practised several years. Whilst remaining a barrister, though not practising, he articulated himself again to an attorney, served two years, and was then at his own request disbarred.*

*Held, that such service, the clerk being at the same time a barrister, could not be made available for the purpose of admission as an attorney.*

Mr. Knowles. I am instructed, my lords, on the part of a gentleman of the name of Bateman, to make a motion to the court for a direction to the Examiners appointed by this court to examine gentlemen for the profession of attorneys—that they may be instructed to examine Mr. Bateman, with a view to his being admitted an attorney of the court.

The affidavit on which I make this motion, discloses these facts:—Mr. Bateman states, that by certain articles which were entered into between his father on the one part, and himself and a gentleman of the name of Hughes, he was articulated to Mr. Hughes for a term of five years, and it appears that the date of the articles was the 2nd of September 1826. The affidavit states, that he duly served Mr. Hughes as such articulated clerk in his business or profession of an attorney and solicitor for the term of three

\* The importance of this case, and the peculiar interest attached to it by our readers, have induced us to obtain a copy of the short-hand writer's notes, from which this report has been taken.—ED.

years from the date thereof; when the articles were determined by mutual consent. That in the month of October, 1829, he entered as a student at Christ's College, at the University of Cambridge, and proceeded to the degree of Bachelor of Arts in the same university in the month of January, 1833. That from that time he was engaged as a student in the chambers of William Dugdale, Esq., and the late Lewis Duval, Esq., Barrister-at-law, for the space of three years and upwards. That in the year 1831, he was admitted a student of the Society of the Middle Temple, and kept terms for the purpose of being called to the bar; that he was called to the bar by that society in the month of May, 1835, and that he continued in practice until the end of the year 1842, and then, for reasons which it has not been necessary to state in the affidavit, he was anxious to recur to the original branch of his profession, and to serve the remainder of his time, and he says, that at the end of the year 1842, he quitted his practice at the bar, and has never since been engaged therein, and that by articles of clerkship bearing date the 27th of January, 1843, made between the deponent and a gentleman of the name of Brabant, he was articulated to Mr. Brabant to serve him as his articulated clerk, in his business or profession of attorney-at-law and solicitor for the term of five years from the date of the last-mentioned articles, subject to a proviso, that if at any time previously to the expiration of such term of five years, he, deponent, should by virtue of his service for the period of three years as clerk to Mr. Hughes, the original master, in the first-mentioned articles of his clerkship, and his service under the articles with William Hughes Brabant or otherwise, be admitted as an attorney or solicitor of her Majesty's courts of law and equity at Westminster, or any of them, in such case it should be lawful for deponent thereupon, or at any time thereafter, to determine and put an end to the last-mentioned articles.

Then, my lords, he says, that he has served this last-mentioned gentleman as his articulated clerk under articles, from the date of such articles up to the present time, and that he hath not during such period been engaged in any other practice, profession, or business whatsoever. And he says, that he was on the 17th day of this instant month of January disbarred upon his own petition for that purpose, presented to the Society of the Middle Temple, and that the fact of his not having previously applied to be disbarred arose from inadvertence, and from his not being aware that such a course would be considered necessary in order to a valid service.

Then, my lords, there are other circumstances stated in the affidavit, which show that the application has been regular, but I apprehend on that part of the case there will be no objection. Therefore, your lordships will find that these are the facts:—This gentleman is articulated in 1826, for a period of five years, he serves three of those years, then he goes to Cambridge, intending to go to the bar; he goes to Cambridge and

studies for three years; he is admitted a student of the Temple in 1831; he occupies his time in the chambers of a most eminent conveyancer the whole of his studentship, and is called to the bar in 1835. Then in January 1843, he is articulated afresh to a new master, he serves him for two years; he swears he has not attended to any other business or profession, but has made his service under the articles; he has, therefore, served five entire years under articles, and that I apprehend is all that the statute requires; he has been engaged intermediately certainly a long period in the pursuit of the profession, a most important fact, because, during the whole of that time he has not been engaged in any pursuit inconsistent with the profession, but has been improving his mind in the pursuit of the profession itself. He is now anxious to be re-admitted, and I understand the gentlemen who oppose this application do not, and indeed cannot, after what I have read, question the personal qualification of this gentleman, but that there is some difficulty to which I will not advert, but leave my learned friend, the Solicitor-General, to state, which they wish to bring before the court, for the purpose of taking the direction of the court. I believe when those doubts are raised I shall not have much difficulty in disposing of them; but in the first instance, as my learned friend is here to answer this application, and as I do not precisely know the grounds on which he proceeds, I leave him to state the objection to the court.

The *Solicitor-General*, (Sir F. Theaiger). My lords, my learned friend has stated very accurately what is the ground on which I appear here to oppose this application—my lords, the circumstances were of such a novel character, and it appeared to the examiners to involve principles of such great importance, that they felt they could not act on the present occasion, and grant this gentleman his certificate without the direction of the court. Without at all questioning in the slightest degree Mr. Bateman's respectability, it does appear to me that he has not laid a proper foundation to entitle himself to apply to be admitted as an attorney.

In the year 1826 he was articulated as an attorney to a Mr. Hughes, under those articles he served for three years; he then entered at the University of Cambridge; he was afterwards admitted as a member of the Middle Temple, and in due time he was called to the bar by that society.

Now, my lords, there is a rule in that society which provides, (a rule of Trinity Term, 1762, concerning the calling of attorneys to the degree of barrister-at-law,) that that should be extended to such persons as had been articulated clerks to attorneys, but had never been themselves admitted as attorneys in any of the courts at Westminster; it appears there was a conference with the benchers of the different inns of court, and in this said conference it was agreed and resolved among all the said deputies of the four inns of court, that from and after the end of this present Trinity Term,



1789, no articulated clerk, either to an attorney or solicitor, or to a clerk in the Court of Chancery or Court of Exchequer, ought to be called to the bar, until his articles shall either have expired or been cancelled for the space of two whole years, and stating it was then ordered by the Masters of the bench then present, that these resolutions should be confirmed and adopted as the rule of that society, in all future applications of such articulated clerks to be called to the bar.

Now, your lordships therefore will observe, that Mr. Bateman could not be called to the bar by the Society of the Middle Temple, or indeed by any other society, without having his articles of clerkship cancelled for two years before his application to be called, and therefore I must take it as a matter of undoubted fact, that Mr. Bateman's articles were cancelled at that time.

My lords, he continued to practice at the bar for a period of eight years; he then, without being disbarred, enters into fresh articles with Mr. Brabant, with whom he serves for a period of two years, being during the whole of that time a barrister-at-law; and I must call your lordships' attention to the extraordinary character of the articles into which this gentleman entered with Mr. Brabant; certainly they are very unusual, and might induce the examiners to pause before they could consider him qualified to have a certificate for admission as an attorney.

In these articles there is a recital, "That whereas the said Joshua Wigley Bateman hath been advised, that he may properly apply to the court for the purpose of uniting a service under the present articles of clerkship with a service under former articles of clerkship hereinafter-mentioned, in order to make up a service of five years under articles, though the services for the two periods be not consecutive, and it is his intention, with the full consent and approbation of the said William Hughes Brabant, to make such application to the court, when, and so soon as he shall have served for a sufficient period under the present articles. Now, this indenture further witnesseth, and it is hereby agreed and declared between and by the said William Hughes Brabant and Joshua Wigley Bateman, that if at any time previously to the expiration of the said term of five years the said Joshua Wigley Bateman shall, by virtue of his service for a period of three years as clerk to Henry Hughes, late of the town of Northampton, gentleman, deceased, under certain articles of clerkship bearing date the 2nd day of September 1826, and made or expressed to be made between the said John Bateman, by his then name of John Buckby, and the said Joshua Wigley Bateman of the one part, and the said Henry Hughes therein described as one of the attorneys of her Majesty's Court of King's Bench at Westminster and solicitor of the High Court of Chancery of the other part, and his service under the present agreement or otherwise, be entitled to be admitted attorney and solicitor of her Majesty's courts

of law and equity at Westminster, or any of them, then and in such case it shall be lawful for the said Joshua Wigley Bateman immediately thereupon, or at any time thereafter, to determine and put an end to this present agreement."

So that your lordships observe this is an alternative agreement: if the service under the agreement can be coupled with the service under the articles of clerkship in the year 1826, then it is intended only to be a service for two years; but if they could not be connected, then the intention of the parties is, that these shall be original articles of clerkship, under which Mr. Bateman shall serve his full term of five years, and be admitted under those articles; and although I have no wish whatever, upon the present occasion, to take any objection with regard to the stamp, yet it is important I should call your lordships' attention to the facts connected with the stamp on these last articles, because it appears to me to throw some light upon what was the impression of the parties with respect to the character of those articles, and also of the stamp office when the stamp was affixed.

My lords, under the Stamp Act, 55 Geo. 3, c. 184, the stamp upon articles of clerkship is 120*l.*, and then it says, in the schedule, under the head *Articles of Clerkship*: "Articles of clerkship, or contracts, or indentures of apprenticeship, whereby any person having been before bound to serve as a clerk or apprentice in order to any such admission as aforesaid, either in England or Scotland, and not having completed or perfected his service so as to entitle himself to such admission, shall become bound afresh for a new term of years for the same purpose:—the same duty as would be payable on those original articles, contract, or indenture, for such purpose, and for any counterpart or duplicate thereof, 1*l.* 15*s.*"

Now, my lords, Mr. Bateman has applied to the stamp office, he has procured the stamp on the first articles of clerkship to be cancelled, and that stamp has been applied to the second articles of clerkship, indicating, therefore, I think pretty strongly, the impression on Mr. Bateman's mind, that those articles of clerkship were utterly useless, and certainly showing the impression which the stamp office received from communications which were made to them that there had been nothing done, but those articles of clerkship had in fact become unavailable for the purpose for which they were entered into.

Under these circumstances, the question really is—whether it is competent for a gentleman who is at the bar to bind himself, while he continues a barrister, by articles of clerkship, by service under which, at the very time he is a barrister, he may entitle himself to admission as an attorney.

The cases on this subject are but few; there is a very recent one, which I do not find reported in any of the regular reports of the court.

**Lord Denman.**—It is distinctly stated that he never practised as a barrister since.

**The Solicitor-General.**—Yes; but there is a very important principle involved in this consideration. The question is, whether a person is entitled to place himself in this situation: he enters into articles of clerkship, continuing a barrister; he leaves it open to himself to choose either of the two courses. If anything had occurred during the time of Mr. Bateman's articles, (the last articles,) which offered an opportunity of his accepting a situation which might be held by a barrister of seven years' standing, (no unusual qualification,) Mr. Bateman was ready to accept that office,—he did not procure himself to be disbarred; if, on the other hand, nothing of that kind offered, then he would use the articles of clerkship, and service under them, to strike into the attorney's practice.

Now I apprehend that is quite contrary to any principle on which articles of clerkship are considered to be essential in order to qualify a gentleman for admission as an attorney; the object is, that the party should be regularly trained up to that particular branch of the profession.

**Mr. Justice Coleridge.**—By the rule of the Temple, the articulated clerk might be admitted to the society and keep his terms, only he must be two years after the expiration of the articles, or the cancelling, before he could be called.

**The Solicitor-General.**—I cannot speak out of the affidavits. My friend (Mr. Knowles) is a bencher of the Middle Temple. With regard to that regulation, that applies merely to parties being called to the bar; but I believe there is some rule in the Middle Temple with regard to parties being admitted as students at the Middle Temple, which might probably exclude this gentleman.

**Mr. Knowles.**—The rule of the Middle Temple is this: a gentleman who is an attorney may be admitted to keep terms, but no term which he keeps while serving under articles, or serving in an attorney's office, would be counted on his way to the bar, but his standing at the hall would count from his original entrance.

**The Solicitor-General.**—If it is a recent rule it would not apply to this gentleman.<sup>b</sup>

**Mr. Knowles.**—I am giving the rule correctly in existence during the whole time this gentleman was there.

**The Solicitor-General.**—I have no doubt. Probably the rule I am referring to is a more recent rule, and would not apply to the case of Mr. Bateman at the time of his admission to that society.

I was going to call attention to the case *ex parte Cole*, 1 Douglas, 114: "Cooper moved, on the part of Cole, who had formerly been an attorney of this court, and had at his own desire been struck off the roll and was then called to the bar, that he might be again put on the roll of attorneys. The court refused to

comply with the application, there being no instance of a barrister being admitted an attorney. They said he ought first to have applied to his society to be disbarred."

Now I use that to show what the impression is with regard to the complete separation of the two branches of the profession; and it appears to me to be rather an *à fortiori* case on this occasion, that a gentleman who is a barrister should not enter into articles as clerk to an attorney; if he cannot be admitted as an attorney while he is a barrister, I should say, *à fortiori*, he cannot enter into articles to serve the attorney as a clerk.

My lords, although I do not, of course, attempt to impute in the slightest degree any impropriety to this gentleman, or to intimate anything in the smallest degree of reproach on the connexion between him and the attorneys with whom he entered into these articles, yet your lordship will observe what danger there might be, if this was not to be considered the principle which is to regulate admissions of this description, because it might be that a gentleman serving an attorney under articles of clerkship at the time he was a barrister, might sign all their pleas and motions, and things to which it was necessary to have a barrister's hand. Do not for one moment suppose I am imputing anything of the kind on the present occasion, but I only show how dangerous it would be to depart from what appears to me to be the principle of separation between these two branches of the profession.

**Mr. Justice Patteson.**—In what terms does he state it was through inadvertence?

**The Solicitor-General.**—Why, my lords, in a very unsatisfactory way. There was nothing to have prevented Mr. Bateman being disbarred before he entered into these second articles of clerkship—nothing whatever. He says he was on the 17th of this instant month of January disbarred upon his own petition, for that purpose presented to the Honourable Society of the Middle Temple, and that the fact of his not having previously applied to be disbarred arose from inadvertence, and from his not being aware that such a course would be considered necessary in order to a valid service under his last-mentioned articles. He gives no satisfactory reason at all why before this indenture was entered into he was not disbarred.

It really appears to me, my lords, to involve a principle of very considerable importance: of course the examiners felt a difficulty in this case. The circumstances were quite novel, and seemed to them to involve principles of importance to the profession at large—to both branches of the profession—and they felt that they could not, consistent with their duty to that profession, admit this gentleman without having the directions of the court on the subject, and I am not desirous to oppose this in any feeling against this gentleman; they have none; but they only desire to perform their duty to the profession; and really, my lords, when this gentleman chooses, under these cir-

<sup>b</sup> See the recent rule, p. 84, *ante*.

cumstances, to continue as a barrister, when there is no difficulty whatever in his being disbarred—when he does not give any satisfactory reason why he did not pursue that course before—when your lordships find, that with regard to the articles themselves, it is quite evident that he himself at that time must have had his attention called to the circumstance of his being a barrister, and of the difficulty that might subsequently arise. So that, more than two years ago, your lordships see, at the time when those articles were entered into, the attention of Mr. Bateman must have been called to all the difficulties which would embarrass the course he then had in view. Why at that time did he not apply to his society to disbar him? why did he not leave himself then completely free to enter into those articles or to adopt any other course? My lords, I think that is the course he should have adopted, considering the very peculiar situation in which Mr. Bateman was, and considering how very dangerous it would be to admit that a party in the situation in which he was at the bar, could bind himself by articles of clerkship which could be serviceable to him—a service under which would enable him to be admitted as an attorney. Considering how carefully on every occasion the two branches of the profession have been separated from each other, for reasons which are quite obvious, which are important to the independence and respectability of both branches of the profession—it does appear to me that this is a question of very considerable importance, and that Mr. Bateman is not in a condition in which he can call on the examiners to grant him a certificate, inasmuch as these second articles of clerkship, which were entered into at the time when he was a barrister, are not such articles of clerkship as could have been contemplated by the legislature, or service under which would entitle him to be admitted.

Mr. Robinson.—My lords, I am on the same side with the Solicitor-General. I apprehend that the real question is, whether your lordships shall now for the first time sanction a practice for which undoubtedly there is no precedent to be found in the books—a practice which is not very conducive to the respectability and independence of either of the two branches of the profession. I say this application is entirely unprecedented, because, although my friend, the Solicitor-General, has referred you to *ex parte Cole*, 1st Douglas' Reports, where this court did admit a person on being disbarred, to be re-admitted an attorney: and, although there is also a subsequent case decided recently by Mr. Justice Wightman, in the course of Michaelmas Term, 1842, with respect to a gentleman of the name of *Warner*, which I can find reported only in the 6th volume of the *Jurist*, page 1016, yet your lordships will observe in both these cases, the application was that the party should be re-admitted an attorney, and in each of these cases it will

appear by reference to the reports that the service for the full period of five years had been rendered by the party who applied before he became a barrister at all. In each case, having served duly under his articles, and having been duly admitted an attorney he then got himself taken off the rolls of attorneys of this court, and became a barrister, and the question was in each of these cases, whether, after he, in like manner, got himself removed from the rolls of barristers in the inns of court, he might then be admitted to his original condition of an attorney. That is entirely different from the present application, because here the party never has been an attorney at all, and the question for the first time arises which has never been mooted even in the former cases, whether there can be any valid and *bona fide* service as an attorney's clerk at the time when a gentleman is a barrister-at-law. I take it in these two cases the court required both; in *ex parte Cole* and *ex parte Warner*, the court required, before the applicant should be re-admitted an attorney, even under those circumstances there stated, that he should, at all events, get himself removed from the rank of a barrister.

Now, my lords, on what grounds was that? That could only be on the ground that this court considered those two conditions—those two states as inconsistent with each other, the state of a barrister and the state of an attorney. Otherwise, there would be nothing inconsistent in the gentleman practising as an attorney, and confining himself entirely to that branch of the profession, and he might still say, as Mr. Bateman says here, although I had been a barrister, now I confine my practice to the branch of the profession as an attorney. In each case the court required he should be removed from being a barrister, considering, and I apprehend justly considering, that the two branches and ranks of the profession were inconsistent with each other. If the rank of a barrister is inconsistent with the rank of an attorney, surely there is something at least equally inconsistent between the rank of a barrister and the rank of an attorney's clerk. And, therefore, in the absence of any authority for this application, I apprehend I may say no authority can be cited for it, I do think your lordships will pause before you sanction for the first time this, which, at least, seems subject to objection. And I should mention the party has not been disbarred in the present instance until just ten days ago.

It is an extremely odd circumstance that this gentleman should say that this mistake of his has arisen, or rather the non-removal of himself from the grade of a barrister, has been through inadvertence: I do not comprehend what he means by that, because it is quite obvious, on looking at the second articles, the attention of parties, (whether his or not I will not say), but the attention of the gentleman who prepared those articles must have been vigilantly alive to the probability of some such

question as this arising. I should think your lordships would not be much inclined to interfere in a case of this sort, and establish a precedent for the first time.

I hardly think this is a case in which Mr. Bateman comes before the court in a way very inviting to such a decision, because your lordship sees it is not like the case of a gentleman being a barrister, who had then for the first time articulated himself at all, but he being an attorney becomes a barrister after having entered the inns of court. There is considerable force undoubtedly in what my friend the Solicitor-General has observed, with respect to this gentleman entering into these new articles for the full period of five years instead of the supplementary period of two years, which I find is the more ordinary course. I can find no case where the second binding has been for the full period of five years, but the ordinary binding has been for the period left defective under the former articles. In this case the gentleman does not take that course, but takes the precaution of binding himself *de novo* for the whole period of five years.

I think he does not come forward in a position of very great hardship, because he contemplates at the time the possibility and probability of the two services not being allowed to be tacked together.

On these grounds I hope your lordships will think, at all events, the examiners in this case have done perfectly right in pausing before they sanctioned any such departure from ordinary custom, and I hope your lordships will also think, for the respectability of the profession, the refusal they have come to is the correct one.

Mr. Kaewles.—I trust the respectability of the profession will receive no stain from admitting Mr. Bateman into that profession; for, for the life of me, I cannot understand why my learned friends are talking of danger to the respectability of the profession of an attorney, by admitting a gentleman whose character on all hands is admitted to be without impeachment, who by a regular course of study has prepared himself for the practice of the higher branch, who has practised that branch for a series of years, but who now finding an opening which gives promise of something better in the other, is desirous of retracing his steps and becoming a member of the other profession, and I cannot see how the profession of an attorney can be at all stained by the admission of Mr. Bateman as a member of that body.

But, my lords, I apprehend that is not the question now before the court; the question, if I mistake not, will be found to be this:—is there anything in the act of parliament which obliges a gentleman to serve more than five years, or in any decision or rule of this court upon that act of parliament? is there anything to show that Mr. Bateman is not entitled to become an attorney? And it is therefore desirable to see what the act of parliament is, and also to look at the rules adopted by the examiners them-

selves, who, I presume, know the act of parliament, and understand the grounds on which they have acted.

My lords, the act of parliament, as your lordships are aware, is the 2nd Geo. 2, c. 23, and all that that act requires is this: that no person shall be admitted to be an attorney unless for the full period of five years he shall have served under articles; no other restriction is imposed; and in every case in which any question has come before the court, the court has always looked to this: sometimes, no doubt, the court has said, "We will not permit a gentleman to be an attorney who has held an office during his clerkship." Why? Because that office imposes duties upon him which prevent him from serving the master whom he has contracted to serve. But there is no case where the party holding a nominal office which took up no portion of his time was forbidden by the court to be an attorney, because he held that office. There is the case which I have heard mentioned to-day, I think *ex parte Taylor*, where a gentleman who had held an office which took up part of his time, was, after his being admitted an attorney, I think, struck off the rolls on this ground and on this only, that by holding the office and performing its duties, it was clear he had not done that which the act of parliament required; he had not for the period of five years served the gentleman to whom he had been articulated; but I venture to say, that there is no case in which the court has refused the admission of an attorney because he merely held the office: the refusal has always gone upon this, that the duties of the office took up his time, and therefore it rendered it impossible for him to serve his master the whole of his time, and there are cases where even an articulated clerk has devoted some part of his time to the service of another attorney, and the court has nevertheless allowed him to be admitted, it being shown that during regular hours of business he was always in office. And, my lords, I speak of the rules laid down by the examiners themselves, and I will call your lordships' attention to them, merely for the purpose of showing that they interpret the act of parliament exactly in the way which I am now pressing on the court, because you will see the questions which the examiners propound to the gentlemen who apply to be examined, have reference solely to the time of their service. Now, my lords, the questions are these:—"Have you served the whole term of your articles at the office?" I am reading now the questions which are given in Mr. Chitty's Book of Practice, as the questions inserted in regulations concerning the due service of clerkships which are to be answered.

The questions are these: "What was your age?" and so on. "Have you served the whole term of your articles at the office where the attorney or attorneys to whom you were articulated or assigned carried on his or their business, &c.?" if not, state the reason." Then again, "Have you at any time during the term

of your articles been absent without the permission of the attorney or attorneys to whom you were articulated?" Showing that they refer entirely to the fact of service. "Have you, during the period of your articles, been engaged or concerned in any profession, business, or employment, other than your professional employment as clerk?"

"New, my lords, those are the questions put by the examiners, founded on the statute; and is there a single question here that Mr. Bateman could not most conscientiously answer? Has he been engaged during the term of his clerkship in any other profession than that of his business as clerk? He swears he has not. There is not the least reason to presume that in swearing so he swears that which is not correct. And therefore, my lords, I say that by serving under articles for five years, and being engaged during the service in no other matter or profession, he has done everything required by the act of parliament; there is no rule of court that militates against him, and there is no decision of this court that militates against him either.

It is said a considerable period has elapsed between the service under one set of articles and the other, and it is so; but there are many cases to which I might refer the court where that has been holden to be no objection; and in the case of *Carter*, 2 Wm. Blackstone's Reports, 957, which is quoted and recognised in *re Taylor*, a comparatively modern case, I find this is the decision of the court. In this case, Carter had been articulated in March 1755 as a clerk to Mr. Wilson for five years; an affidavit was produced of the articles being regularly filed — (the articles were lost); he served one year and a half, and then they parted by consent, which is exactly the case before the court. He then served Oakley as a clerk, but without articles; since then he served Mitchell without articles for several years; and in 1768, being a period of thirteen years after his original articles, he was articulated to Mr. Gregory Bateman, and served him for three years and a half.

Now, my lords, what says the court? The court, considering that this man had been educated in the profession for a space of nineteen years, had been regularly articulated for five years originally, and afterwards for three years and a half to make up the deficiency, and that the intermediate time had been spent in the same manner as if he had been under articles, thought it a case of equal hardship with that of Fletcher, and directed him to be admitted. And in the case of *Fletcher*, where it appeared he had been articulated under articles which had not been duly stamped, the court held that not to be an objection, but decided in his favour, and allowed him to be admitted after the articles had been stamped.

My lords, that is a case very strong in my favour, and that case has been recognised by many recent decisions, and by a comparatively recent case which is not yet reported. A gentleman had been engaged after his clerkship in

a grocer's shop many years; the court held that no objection, but directed the examiners to examine him; and indeed my learned friends do not put their objections so much on the ground of time between the period of the service as upon another ground.

Now let me examine what the principal ground is. It is said that this gentleman has been a barrister during the period of the service, and that is true. It is said also that by an order of the Middle Temple, no person can be admitted to keep terms unless his articles have been cancelled. No doubt the articles appear to have been cancelled, or what is the same thing, the parties part by mutual consent, and nothing more is done under them; but, my lords, it will hardly be contended that by the fact of the articles being cancelled, that service under those articles is rendered of no avail. Take the ordinary case, take the case where any interest has been acquired under a deed which is afterwards cancelled, is that interest divested? Clearly not. There are many cases to that effect; they were all cited in a case recently before the Exchequer, and I understand, my learned friend, the Solicitor-General, does not dispute it. It is admitted the three years' service was good service; it is not denied that it may be united with the service under the second articles. Does it make any difference that, while under subsequent articles, this gentleman had not been struck off the rolls of barristers? I submit not.

Something has been said as to the made the articles to the attorney have been drawn up. No doubt the articles, for the sake of caution, are drawn up in that way; but Mr. Bateman swears, and there is nothing to contradict him either in fact or inference, that he was not aware that it was necessary he should be disbarred; he positively swears, in language as strong as can be used, that he has not acted in any way during the two years but as the articulated clerk of this gentleman the attorney.

My lords, the case which has been cited, so far from being a case against me, is a case directly in my favour, because what is the decision in *ex parte Cole*? In that case a gentleman who had formerly been an attorney, and had then become a barrister, applied that he might be put on the roll of attorneys, and he had not, at the time of the application, been disbarred. The court said, "No, you must be disbarred first," and that is the whole of this decision. This is in my favour; if he had been disbarred at that moment, it is clear the court then would have admitted him, because they said "he ought first to apply to his society to be disbarred." Mr. Bateman has been disbarred; Mr. Bateman is no longer a barrister; he could no longer act in any capacity but that of an attorney; and I confess I do not see any of those consequences which have been so pathetically alluded to, if this gentleman should be admitted an attorney.

My lord, it is quite clear the court has, in many instances, as a matter of indulgence,

even if a party could not claim it as strict right, given its decision in favour of the party applying. It is of great consequence to this gentleman. I may mention to the court, although it is not in the affidavit, that very considerable prospects will be stopped if he is not now allowed to become an attorney.

Why, my lords, is he not? It is not pretended that he has not done all that the act of parliament required; he has served under articles for five years; he has, during those five years, followed no other service whatever, and there is no rule of court, and no decision of the court, which says, under these circumstances, he should not be admitted.

My lords, something was said about the Stamp Act. It appears to me the stamp affixed on the new articles is the only stamp that can be affixed under the circumstances.

Lord Denman.—It is only observed upon as showing his own intention.

The Solicitor-General.—Certainly not as an objection.

Mr. Knowles.—There was a part of that which my friend did not read, which I will read, which shows why Mr. Bateman, when he was articulated afresh, had his articles stamped with the full stamp of £120, because it was the only stamp that under the circumstances could be applied. There is a provision made for the original articles of clerkship £120; there is a provision made applying to the assignment of those articles, but having reference only to those for a stamp of 1*l.* 15*s.*, but for the case of Mr. Bateman, a further provision is made, to which I will call the attention of the court. "Articles of clerkship or contract or indenture of apprenticeship, whereby any person having been before bound to serve as the clerk or apprentice, in order to any such admission as aforesaid, either in England or Scotland, and not having completed his service, so as to entitle him to such admission, shall become bound afresh for a new term of years for the same purpose, the same as the original articles, 120*l.*" And then follows, "But in that case, the stamp used on the articles, contract, or indenture first entered into for the same purpose shall be allowed as a spoiled stamp."

My lords, that was the only clause under which Mr. Bateman could act—he could not impose 1*l.* 15*s.* on the new articles, because the old articles had in every way expired—there could be no assignment under them—he was obliged, therefore, to be articulated afresh under this particular clause, and obliged to have the stamp that he had.

My lords, I am quite sure it would be unnecessary for me to urge upon the court any consideration of hardship—it is not pretended that this gentleman has acted, and the court may take from me, it would interfere with his interest very much, if he were not to succeed in the application: and upon the authority of these cases, which shows the court will take into its consideration these matters, I would, even if he be not strictly entitled, which nevertheless I submit he is, the court under

these circumstances, circumstances never likely to occur again or to become a precedent, would say, that the gentleman's views shall not be thwarted, but that he shall be entitled to become an attorney.

Mr. Justice Coleridge.—If he had been clear that articles of two years would have done, then he would have come under the earlier part. That would have been for the residue.

Mr. Knowles.—No, he could not.

Mr. Justice Coleridge.—Yes, he might, because they had been vacated by consent; "in consequence of the contract between them being vacated by consent, or by rule of court, or in any other event,"—then "one pound fifteen shillings."

Mr. Knowles.—I apprehend that was intended to meet some case of this sort: there might be a case where the first Master would not assign—he might be abroad. Under a variety of circumstances he might not be in a condition to assign, but the last clause, in express words, meets the very case now before the court. "Having been before bound, and not having completed his term, shall become bound afresh for a new term of years." It does not say for any particular term of years.

Some observation was made—this gentleman might have been signing pleas; is there any ground for supposing it?

Mr. Justice Coleridge.—No, not *this gentleman*.

The Solicitor-General.—I particularly guarded against applying it to this particular case. I put it on the principle of danger that might be apprehended.

Mr. Knowles.—This is an answer. If any gentleman placed in like circumstances did sign pleas while he was an articulated clerk, the court would remove him from the list of attorneys after he had got his admission, on proof of that circumstance, because the court would then see, he had not served under these articles, but had served somebody else.

Lord Denman.—I think the examiners do very properly in bringing a case of this sort before the court. It appears to be perfectly new; nothing of the kind has occurred before, and I do not think it any answer to say that there is no statutable disqualification which prevents the admission of this gentleman. No imputation at all is cast upon his individual conduct, but the position in which he has placed himself is one upon which I think the court are called upon to exercise their judgment whether a person so acting ought to be admitted. This arises not from the statute, but from the power of admission, which involves the power of rejection, and throws upon the court, in all doubtful cases, the duty of inquiring whether the course that has been taken is one that ought to be established as a precedent, and ought to exist in the profession of the law. I think that it ought not to exist. It appears to me that the danger is great and manifest; and, however we may regret that a gentleman who appears to be free from all moral taint shall be impeded in his course of exertions for life, or shall be put

to any inconvenience whatever, and should suffer that inconvenience, still our duty requires us to take the greatest possible care that there shall be no opportunity for malversation in any way, by means of the connexion that may take place between the barrister and the gentlemen in the other branch of the profession.

Now the danger is most manifest. What the Solicitor-General threw out is extremely likely to take place if this were to be considered as an admissible practice. But, on the other hand, suppose, now, that this gentleman, at the end of his two years, had thought it more convenient to continue in practice as a barrister. One cannot help seeing that the service in the attorney's office for that period might lead to most improper advantages in that respect. I speak quite generally, and do not let it be supposed anything particular to be applied to this case. I feel confident, from what has been stated, that that is not so; but we must look to the danger which would result if this were acted upon.

Now it seems to me that none of these cases apply in the slightest degree except that of *ex parte Cole*, which applies as a reason for refusing to admit this gentleman. The dispensing with the stamps, and the dispensing with articles that had been lost, are quite matters of a different consideration. It would be cruel not to allow for accidents of that description, and to waive mere revenue objections that might otherwise stand in the way. But the case *ex parte Cole* seems to me to furnish a strong argument *à fortiori* against this admission.

There the gentleman applied to be admitted as an attorney, being a barrister, and the court said he ought first to have applied to his society to be disbarred. Then is it to be said, that if the office of barrister and attorney could not be held together, that it shall be admitted by the court that the party who has held together the office of barrister with the service of attorney's clerk, shall afterwards come and be admitted as an attorney on a service performed in such a manner that he could not have acted in the situation of a principal if that case had arisen.

It seems to me that is a case which furnishes a strong argument against this application, and that generally, in the exercise of that discretion which is vested in us, we should do wrong if we admitted any doubt for a single moment to exist that this is a practice which cannot be permitted; and that no person whose service of clerk has been at the same time performed by one who was a barrister, can avail himself of that service for the purpose of being admitted as an attorney.

*Ex parte Bateman*: Q. B. F. J., 27th Jan. 1845.

## Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

### ASSIGNMENT OF ERRORS.—PLEA TO.—MOTION TO REVERSE JUDGMENT.—PRACTICE.

*A rule to reverse a judgment of outlawry, on the ground that the defendant in error has not pleaded to the assignment of errors, is a rule nisi only, and not absolute in the first instance.*

*E. Beavan* applied for a rule to reverse a judgment of outlawry, on which a writ of error *coram nobis* had been brought. The ground on which the motion was made was, that the defendant in error had allowed the time for pleading to the assignment of errors to expire without pleading or taking any further steps in the proceedings in error. He submitted that he was entitled to a rule absolute in the first instance, on the ground that a defendant in error stands in the same position as the defendant in an original action. He referred to *Walmsley v. Roson*,<sup>a</sup> where after a *scire feci* returned to *as cire facias ad audiendum errores*, and an entry of the default, the judgment was reversed upon motion upon production of the record, without making it a *conclisum* or putting it in the paper, and to *Thatcher v. Stephenson*,<sup>b</sup> where after the defendant had omitted to appear and join in error, the judgment was reversed without a rule to join in error.

*Williams, J.*, after consulting with the Master: you are entitled to a rule nisi only.

Rule nisi.

*Greville v. Cooper and others in error*. Q. B. P. C., M. T., 1844.

### ATTACHMENT.—NON-PAYMENT OF COSTS.—RULE.—TIME OF SERVICE.

*It is no ground of objection to an application for a rule absolute in the first instance for an attachment for non-payment of costs on the Master's allocatur, that the rule ordering the payment of the costs, and the allocatur thereon, have only been served upon the party on the day when, and immediately before such application is made.*

*Gray* (on the 25th of November) moved for a rule for an attachment against the defendant, absolute in the first instance, for the non-payment of costs pursuant to the Master's allocatur. It appeared that the rule ordering the payment of the costs in question, and the Master's allocatur thereon, which had been drawn up as far back as the 17th of June last, were personally served upon the defendant in court on this day, and very shortly before the present motion, when the amount was demanded,

<sup>a</sup> 2 Strange, 1210.

<sup>b</sup> 1 Strange, 144.

but not paid. It was submitted that the contempt being complete when a party who is ordered by a rule of court to pay costs absolutely neglects to pay forthwith, it was competent for the plaintiff to move for an attachment immediately.

*Leak*, who was instructed to apply for a cross-rule, here interrupted, and objected that the service was insufficient.

*Patteson J.* (after consulting the Master):—There is, it seems, no objection to such a course. The rule absolute must be granted, but it may lie in the office for a week.

The rule was ultimately made absolute without terms. Rule absolute.

*Steel v. Compton*, Q. B. P. C. M. T. 1845.

Exchequer.

[Reported by A. P. HURLESTONE, Esq., Barrister at Law.]

AMENDMENT.—STATUTE OF LIMITATIONS.

*The court will amend a writ of summons by adding the name of another plaintiff, where it appears that the debt will be barred by the Statute of Limitations unless the amendment be allowed.*

A WRIT of summons had issued in the usual form, at the suit of two plaintiffs. A rule nisi was afterwards obtained to amend the writ, by adding the name of another plaintiff. The affidavits in support of the application stated that the two plaintiffs sued as the trade assignees of a bankrupt, and that it was necessary to make the official assignee a joint plaintiff, and unless the amendment was allowed, the debt would be barred by the Statute of Limitations.

*Gray* showed cause.—The court has no power to amend a writ of summons by adding another plaintiff. The only authorities in support of such amendment are to be found in this court. *Baker v. Neaver*, 1 C. & M. 112; *Horton v. the Inhabitants of Stamford*, 1 C. & M. 713; *Lakin v. Watson*, 2 Dow. P. C. 633. The Court of Queen's Bench has expressly repudiated such power. In *Roberts v. Bate*, 6 Adol. & E. 778, Lord Denman, C. J., advertising to the decisions of this court, says, "I have every possible disposition to bow to any decision adopted on consideration by the Court of Exchequer, or any other court, but I doubt the power of the courts to do any such thing as was there done. I doubt whether parties named on writs, and having, by the manner in which they are named, certain defined rights, are to be deprived of them by an alteration which the opposite party finds necessary in consequence of his own mistake." And *Patteson, J.*, says, "I cannot see why the amendment should be permitted for the purpose of saving the Statute of Limitations, more than on any other account." [*Pollock, C. B.*—That was a case in which it was sought to add a defendant after plea in abatement; and it is

certainly more unreasonable to make a defendant, who has had no notice, a party to the suit, than to add a plaintiff who is desirous of being joined.] In *Eubank v. Owen*, 5 Adol. & E. 298, the Court of Queen's Bench held that they had no power to amend the proceedings in replevin by adding the name of the husband of a married woman, though in a case of obvious oppression. An amended writ cannot be said to be a writ issued in conformity with the provisions of the 2 Will. 4, c. 39. The 12th section of that act requires every writ to bear date on the day on which it issued; but when another plaintiff is added, the writ is altogether a different writ from that to which the seal of the court was affixed. After alteration, the writ has no validity unless resealed. [*Parke, B.*—Not if the alteration be made by the party; but it is otherwise if the alteration be made by the court.] Where a writ of right was altered as to the day of its return, and resealed, the writ was set aside because the teste was not altered. *Foot v. Collins*, 1 Myl. & Craig, 250. The defendant in this case has acquired a protection by reason of the Statute of Limitations, and this amendment would be in contravention of that act.

*Hugh Hill*, in support of the rule.—*Baker v. Neaver*, *Horton v. the Inhabitants of Stamford*, and *Lakin v. Hutton*, are express authorities in favour of this application. In *Eccles v. Cole*, 1 Dow. P. C. 34, the writ of summons was amended by altering the cause of action from "debt" to "promises," although more than four months had elapsed from the date of the writ. In *Williams v. Williams*, 2 Dow. P. C. 509, N. S., the court amended the memorandum and appearance required by the 2 Will. 4, c. 39, s. 10, in order to prevent the operation of the Statute of Limitations. In *Palmer v. Beale*, 9 Dow. P. C. 529, the record was amended by striking out the name of one of the defendants. *Foot v. Collins* has no application to this case, for there the alteration was made by the party, not by the court. Before the Uniformity of Process Act, the courts frequently relaxed the strict rule with respect to amendments, in order that parties might not lose their remedy. *Billing v. Flight*, 6 Taunt. 419; *Stoor v. Watson*, 2 Scott, 842.

*Pollock, C. B.*—We will consult the judges of the other courts, and endeavour to lay down some rule of practice common to all.

*Cur. adv. vult.*

*Parke, B.*, (on the 10th of December,) said, in the case in which an application was made to amend a writ of summons, and it appeared that unless the amendment was allowed the debt would be barred, we entertained some doubt as to whether we ought to grant the application; but the court now think that the rule ought to be made absolute.

*Brown v. Fullerton*. Exchequer. Michaelmas Term, 1844.



## POINTS FROM CONTEMPORANEOUS REPORTS.

*Edwards v. Towels*, 5 Man. & Gr. 624.

## NECESSARIES TO A WIFE LIVING APART FROM HER HUSBAND.

This is an instructive case, although the facts are short. The question was how far a husband will be responsible for necessities furnished to a wife living apart from him,—the circumstances which caused the separation not appearing. In January, 1841, the plaintiff's attorney sent to the defendant the following letter:

"Sir,—I have this morning had communication with the friends of your wife; and my instructions are to apprise you that she has been endeavouring to support herself, but that for some time past she has not been able to do so; consequently she is now getting fast into debt. You must be aware that you are liable for all debts for necessities that she may contract. I am further instructed to inform you that she is anxious to return to you. Should you decline her doing so, I am authorised to negotiate with you for an allowance to her for support. I am sure that, as a man, you will see the necessity of this. You were the means of depriving her of a comfortable situation, which I understand she had before marriage with you. Unless, therefore, I hear from you satisfactorily by Friday next, I must adopt those measures which will compel the same, and put you to a considerable expence in the end."

To this letter no answer was returned. At the trial before the under-sheriff of Middlesex, it was left to the jury to say whether the defendant, by not taking notice of the letter, had impliedly authorised his wife to bind him for necessities, and the jury returned a verdict for the plaintiff. But upon a rule nisi to enter a nonsuit, pursuant to leave reserved, or for a new trial, on the ground of misdirection, the case of *Manswaring v. Leslie* was relied on by the defendant. There Abbot, C. J., says: "When the wife is not living with her husband, there is no presumption that she has authority to bind him even for necessities suitable to her degree in life. It is for the plaintiff to show that, under the circumstances of the separation, or from the conduct of the husband, she has such authority." In the present case, no such circumstances appeared. The letter was not by the wife; but by the plaintiff's attorney. There was nothing to show that she was ready to return to her husband, or that he refused to receive her.

Lord Chief Justice (Tindal.) "I think that

the case should go down for a new trial, upon the ground of misdirection."<sup>b</sup>

*Hill v. Smith*, 12 Mee. and Welsby, 616.

## SPECIFIC APPROPRIATION.—DAMAGES TO ASSIGNEES.

Where a sum of money is paid to a banker by one of his customers for the specific purpose of retiring acceptances which are about to fall due, the banker is not entitled to apply that money in liquidation of a balance due to himself by such customer. Thus, in the above case, Messrs. Knapton and M'Kay paid to the Bradford Banking Company 440*l.* to meet certain bills, they being at the time indebted to the house to an amount greater than the payment. The company, notwithstanding the specific appropriation of the money, placed it to the credit of their own account, and the bills, consequently, were dishonoured. Knapton and M'Kay became bankrupt. Upon special assumpsit by the assignees, it was held that they were entitled to recover the 440*l.*

In delivering the judgment of the court, Parke, B., after observing that "the debts due to the bankrupt and the damages to be recovered by him for the breach of contracts relative to his personal estate, pass to the assignees," proceeded to deal with the circumstances of the case; and laid down the law as follows. "When the defendants refused to perform this contract, they ought to have returned the money to the bankrupts; and if they did not, the bankrupts might have treated it as money had and received to their use, and recovered the amount in *indebitatus assumpsit*, if the defendants had not been their creditors; and the circumstance of their being so to an equal amount is only material, as it would have given them a defence in *that form of action*, under the statutes of set-off. But the form of the action being changed into one of special *assumpsit*, there would be no defence at all. This is laid down in *Thorpe v. Thorpe*,<sup>c</sup> and in *Colson v. Welsh*.<sup>d</sup> We think, therefore, that the plaintiffs, as assignees, are entitled to recover.

*Toppin v. Field*, 4 Q. B. 386.

## BANKRUPT.—CONTINGENT DEBT.—COLLATERAL SECURITY.

It is a well-established doctrine that claims for unliquidated damages cannot be proved under a fiat of bankruptcy, if there be any

<sup>b</sup> It is not, therefore, the mere fact of a wife living apart from her husband that will bind the husband for necessities furnished to her. It must appear that her quitting him has arisen from some impropriety on his part.

<sup>c</sup> 3 B. & Ad. 580.

<sup>d</sup> Cor. Lord Kenyon, 1 Esp. 379.

uncertainty in the mode of estimating such damages; accordingly, damages sustained from a breach of covenant in not building a certain number of houses within a given time,<sup>e</sup> in not having authority to sell a ship,<sup>f</sup> in not properly indemnifying the assignor of a lease from covenants contained in it,<sup>g</sup> have been held not proveable before Commissioners of Bankruptcy. For in all such cases a variety of circumstances must be taken into consideration, which may either increase or mitigate, or even altogether absolve a party from damages, and which a jury alone has power to determine. Where also there is a penalty or a specific sum of money payable under the contract, by way of security for its fulfilment, the amount cannot be proved as a debt, for it is not the measure, but merely a limitation of the extent of the damages to be claimed in case of a breach.<sup>h</sup>

In the present case the defendant was a certificated bankrupt, who, for the purpose of collaterally securing a debt due to the plaintiff, assigned to him a policy of insurance, and covenanted with him to pay the premiums to the insurance company. After the fiat had issued against the defendant, a premium became due which he failed to pay: and the plaintiff thereupon paid the amount before the defendant obtained his certificate. It appeared that the principal debt, which the policy was assigned collectively to secure, had not been proved under the fiat: and under these circumstances the question arose whether the plaintiff could maintain an action of covenant against the bankrupt for the recovery of damages in satisfaction of the amount of the premium which the plaintiff, through the defendant's breach of covenant, had been obliged to pay. The defendant pleaded his bankruptcy and certificate in bar to the action, and contended that as the principal debt was proveable under the fiat, and the remedy for it barred by the certificate, he was no longer bound by his covenant to keep on foot the collateral security. He also contended that the amount recoverable under the covenant was itself a contingent debt, proveable under the fiat by virtue of the 56th section of the Bankrupt Act, 6 Geo. 4, c. 16. The Court of Queen's Bench, however, held, according to the principle established by the Exchequer Chamber in *Newton v. Scott*,<sup>i</sup> that, though the remedy by action or suit for the

principal debt was barred by the bankruptcy and certificate, the debt itself was not extinguished, and that the covenant for keeping up the insurance as the accessory or collateral security was not determined by the bankruptcy. The court also held that the liability created by the covenant for payment of the premiums to the insurance company did not constitute a debt, either contingent or otherwise, between the bankrupt and the plaintiff, and consequently was not proveable under the fiat.

Lord Denman, C. J.—“The covenant is quite collateral to the original debt, which the policy was issued to secure; and the claim is for unliquidated damages, which might be more or less, according to circumstances. If, instead of the assignment of a policy of insurance upon a life to secure the debt, a house had been assigned, with a covenant to keep it insured from fire, it could hardly be contended that the bankruptcy of the covenantor would have discharged him from liability upon the covenant. But such would necessarily be the case if we held the defendant discharged in the present case.”

*Webb v. Page.* 1 Carr. & K. 23. (Nisi Prius.)

#### SKILLED WITNESS.—EXPENSES.

This was an action for negligence in carrying goods: and on a witness being called to give evidence as to the nature of the damage sustained and the expense of replacing the goods, he objected to be sworn without receiving compensation for his loss of time.

Maule, J.—“There is a distinction between the case of a man who sees a fact and is called to prove it in a court of justice, and that of a man who is selected by a party to give his opinion on a matter with which he is peculiarly conversant from the nature of his employment in life. The former is bound as a matter of public duty to speak to a fact which happens to have fallen within his knowledge—without such testimony the course of justice must be stopped. The latter is under no such obligation. There is no such necessity for his evidence, and the party who selects him must pay him.”

*Kemp v. King.* 2 Moody & Rob. 437. (Nisi Prius.)

#### EVIDENCE.—ATTORNEY'S LIEN.

In this case an attorney was called as a witness for the plaintiff under a *subpoena duces tecum*, and was asked to produce a deed which he had drawn for the plaintiff. The attorney objected to produce it, on the ground that he had a lien on the deed for the costs of preparing it: and Lord Denman, C. J., ruled that the attorney was not bound to produce the deed.

<sup>e</sup> *Bennister v. Scott*, 6 T. R. 489

<sup>f</sup> *Hammond v. Toulmin*, 7 T. R. 612.

<sup>g</sup> *Mayor v. Steward* 4 Burr. 3439; *Awrie v. Mills*, 1 H. Bl. 433; 4 T. R. 94.

<sup>h</sup> 3 Wills, 270.

<sup>i</sup> 9 M. & W. 334; 10 M. & W. 471. From this case it appears that a debt is not extinguished by the debtor's bankruptcy, and that though no action or suit can be maintained for the debt, all collateral remedies, such as lien, distress, &c. remain in force.

## CIRCUITS OF THE JUDGES.

(Mr. Baron Rolfe will remain in Town.)

SPRING CIRCUITS. 1845.		HOME.	MIDLAND.	OXFORD.	NORFOLK.	WESTERN.	NORTH- HERN.	N. WALES.	S. WALES.
Last days for full Notice of Trial.	Commission Days.	L. Denman B. Alder- son	LC J Tindal J. Maule	LCB Pollock B. Platt	B. Parks J. Patteson	J Coleridge J. Erie	J. Colt- man J. Wight- man	J. Wil- liams	J. Cress- well
Febry. 7	Mon. Feb. 17						Lancaster		
10	Thursday 20						Appleby		
12	Saturday 22						Carlisle		
15	Wednesd. 25						Newcas- tle & Tyne		Swansea
17	Thursday 27					Winchester.			
18	Friday 28	Hertford*							
19	Sat. March 1			Reading					
21	Monday 3		Northamp- ton				Durham		
22	Tuesday 4								
23	Wednesday 5	Chelmsfd.		Oxford		Nw. Sarum			
25	Friday 7		Oakham						
26	Saturday 8	Lincoln	Lincoln and	Worcester			York & Walspool	Haverford	
28	Monday 10	Maldstone	[City]	[& City]	Aylesbury	Dorchester	[City]	[west & Tn Cardigan	
March 1	Wednesd. 12		Nottingham				Bala		
3	Thursday 13		[& Tn. Stafford						
4	Friday 14								
5	Saturday 15				Bedford			Carnarvon	Carmar- then
7	Sunday 17	Lewes	Derby			Exeter and [city]			
8	Wednesd. 19				Huntingdon			Beaumaris	
10	Thursday 20				Cambridge				
12	Saturday 22		Leicest. & B.	Shrewsbury			Liver- pool	Ruthin	Brecon
14	Monday 24	Kingston				Bodmin			
15	Wednesd. 25		Coventry					Mold	Presteigne
17	Thursday 27			Hereford	Bury St. Ed- [monds]				
19	Saturday 29		Warwick	Monmouth				Chester & [City]	Chester & [City]
20	Monday 31								
22	Wed. April 2			Gloster & C.	Norwich & [city]	Taunton			

\* The civil business to begin on the 2nd March, at 11 o'clock.

## CHANCERY SITTINGS.

After Hilary Term, 1845.

Lord Chancellor.

AT LINCOLN'S INN.

Monday . Feb. 10	{ The 1st Seal—Appeal Mo- tions.
Tuesday . . . 11	{
Wednesday . . 12	{ Appeals.
Thursday . . . 13	{
Friday . . . 14	{ (Petition-day) Unopposed Petitions only and Ap- peals.
Saturday . . . 15	{
Monday . . . 17	{ Appeals.
Tuesday . . . 18	{
Wednesday . . 19	{
Thursday . . . 20	{ The 2nd Seal—Appeal Mo- tions.
Friday . . . 21	{ (Petition-day) Unopposed Petitions only and Ap- peals.
Saturday . . . 22	{
Monday . . . 24	{
Tuesday . . . 25	{ Appeals.
Wednesday . . 26	{
Thursday . . . 27	{
Friday . . . 28	{ (Petition-day) Unopposed Petitions only and Ap- peals.
Saturday . March 1	{ Appeals.
Monday . . . 3	{ The 3rd Seal—Appeal Mo- tions.
Tuesday . . . 5	{
Wednesday . . 4	{ Appeals.
Thursday . . . 6	{

Friday . . . 7 { (Petition-day) Unopposed  
Petitions only and Ap-  
peals.Saturday . . . 8  
Monday . . . 10 { Appeals.  
Tuesday . . . 11  
Wednesday . . 12Thursday . . . 13 The 4th Seal—Motions.  
Friday . . . 14 The General Petition-day.Note.—Such days as his Lordship is occupied in  
the House of Lords excepted.

Master of the Rolls.

After Hilary Term, 1845.

AT THE ROLLS.

Monday . Feb. 10	Motions.
Tuesday . . . 11	{ Petitions—The Unopposed First.
Wednesday . . 12	{
Thursday . . . 13	{ Pleas, Demurrers, Causes,
Friday . . . 14	{ Further Direction, and
Saturday . . . 15	{ Exceptions.
Monday . . . 17	{
Tuesday . . . 18	{ Petitions—The Unopposed First.
Wednesday . . 19	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . . 20	Motions.
Friday . . . 21	{ Pleas, Demurrers, Causes,
Saturday . . . 22	{ Further Directions, and
Monday . . . 24	{ Exceptions.
Tuesday . . . 25	{ Petitions—The Unopposed First.

Wednesday . . . 26	Pleas, Demurrers, Causes, Further Directions and Exceptions.	
Thursday . . . 27		
Friday . . . 28		
Saturday . . . March 1	Motions.	
Monday . . . 3	Petitions—The Unopposed first.	
Tuesday . . . 4		
Wednesday . . . 5	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Thursday . . . 6		
Friday . . . 7		
Saturday . . . 8	Petitions—The Unopposed first.	
Monday . . . 10		
Tuesday . . . 11	Motions	
Wednesday . . . 12		
Thursday . . . 13		
Friday . . . 14	Petitions—The Unopposed first.	

Short Causes and Consent Causes every Tuesday at the sitting of the court.

Notice.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

### Vice-Chancellor of England.

AT LINCOLN'S INN.

Monday . . . Feb. 10	The 1st Seal—Motions.	
Tuesday . . . 11	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . . 12		
Thursday . . . 13		
Friday . . . 14	(Petition-day) Unopposed Petitions, Short Causes, and Causes.	
Saturday . . . 15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Monday . . . 17		
Tuesday . . . 18		
Wednesday . . . 19	The 2nd Seal—Motions.	
Thursday . . . 20	(Petition-day) Unopposed first, Short Causes and Causes.	
Friday . . . 21		
Saturday . . . 22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Monday . . . 24		
Tuesday . . . 25		
Wednesday . . . 26	(Petition-day) Unopposed first, Short Causes and Causes.	
Thursday . . . 27	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday . . . 28		
Saturday . . . March 1		
Monday . . . 3	The 3rd Seal—Motions.	
Tuesday . . . 4	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . . 5		
Thursday . . . 6		
Friday . . . 7	(Petition-day) Unopposed first, Short Causes and Causes.	
Saturday . . . 8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Monday . . . 10		
Tuesday . . . 11		
Wednesday . . . 12	The 4th Seal—Motions.	
Thursday . . . 13	(Petition-day) Petitions, Unopposed first, Short Causes, and Petitions.	
Friday . . . 14		

### Vice-Chancellor Knight Bruce.

Monday . . . Feb. 10	The 1st Seal—Motions.
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Tuesday . . . 11	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . . 12		
Thursday . . . 13	Bankrupt Petns. & Causes.	
Friday . . . 14	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Saturday . . . 15		
Monday . . . 17		
Tuesday . . . 18	(Petition-day) Petitions and Causes.	
Wednesday . . . 19	Short Causes and Causes.	
Thursday . . . 20		
Friday . . . 21		
Saturday . . . 22	Bankrupt Petitions and Causes.	
Monday . . . 24	Pleas, Demrs., Exceptions, Causes, and Fur. Directions.	
Tuesday . . . 25		
Wednesday . . . 26		
Thursday . . . 27	Bankrupt Petitions and Causes.	
Friday . . . 28	Pleas, Demurrers, Exceptions, Causes, and Further Dirs.	
Saturday . . . March 1		
Monday . . . 3		
Tuesday . . . 4	(Petition-day) Petitions and Causes.	
Wednesday . . . 5	Short Causes and Causes.	
Thursday . . . 6		
Friday . . . 7		
Saturday . . . 8	Bankrupt Petitions and Causes.	
Monday . . . 10	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.	
Tuesday . . . 11		
Wednesday . . . 12		
Thursday . . . 13	Bankrupt Petitions and Ditto.	
Friday . . . 14	The 4th Seal—Motions and Causes.	
Saturday . . . 15		
Monday . . . 17		

### Vice-Chancellor Stirling.

Monday . . . Feb. 10	The 1st Seal—Motions and Causes.	
Tuesday . . . 11	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.	
Wednesday . . . 12		
Thursday . . . 13		
Friday . . . 14	(Petition-day) Pleas, Demurs., Exons, Causes, and Fur. Dirs.	
Saturday . . . 15	Short Causes, Petitions, (unopposed first,) and Causes.	

Monday . . . . .	17	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . . .	18	
Wednesday . . . . .	19	The 2nd Seal—Motions and Causes.
Thursday . . . . .	20	(Petition-day) Pleas, Demurs., Exons., Causes, and Further Directions.
Friday . . . . .	21	Short Causes, Petitions, (unopposed first,) and Causes.
Saturday . . . . .	22	
Monday . . . . .	24	Pleas, Demurrers, Exceptions, Causes, and Fur. Directions.
Tuesday . . . . .	25	
Wednesday . . . . .	26	
Thursday . . . . .	27	(Petition-day) Pleas, Demurs., Exons., Causes, and Further Directions.
Friday . . . . .	28	Short Causes, Petitions, (unopposed first,) and Causes.
Saturday . . . . .	March 1	
Monday . . . . .	3	The 3rd Seal—Motions and Causes.
Tuesday . . . . .	4	Pleas, Demurrers, Exons., Causes, and Further Directions.
Wednesday . . . . .	5	
Thursday . . . . .	6	(Petition-day) Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
Friday . . . . .	7	Short Causes, Petitions, (unopposed first,) and Causes.
Saturday . . . . .	8	
Monday . . . . .	10	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . . .	11	
Wednesday . . . . .	12	
Thursday . . . . .	13	The 4th Seal—Motions and Causes.
Friday . . . . .	14	(Petition-day) Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
Saturday . . . . .	15	Short Causes, Ptns., (unopposed first,) and Causes.

## ABANDONMENT OF THE LOCAL COURTS AND ECCLESIASTICAL COURTS' BILLS.

It will be seen by the parliamentary reports that the government have expressed their intention not to introduce either a Local Courts' Bill or an Ecclesiastical Courts' Bill in the course of the present session. As we have steadily opposed these measures, this announcement is peculiarly gratifying to us, and we doubt not that it will be so to our readers.

## PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

### House of Lords.

THE session was opened on Tuesday the 4th instant by her Majesty in person. There is nothing to extract from her Majesty's Speech adapted to our pages, for not a word was uttered on the subject of the reform, or alteration, or amendment of the law. We are not entitled, however, to infer from this silence of the government that no measures of importance will be brought forward. Besides the intimation given by the Lord Chancellor, which we have elsewhere noticed, relating to the Amend-

ment of the Transfer of Property Act, Lord Campbell considered that the following measures must be brought before Parliament:—*Appeals in Criminal Cases*, and the *Law of Debtor and Creditor*. The Lord Chancellor did not now object to the consideration of the bill relating to Criminal Appeals, which last year was introduced to meet a particular case. Lord Brougham stated his readiness to defend the Debtor and Creditor bill of last session, but remarked that the clause abolishing arrest in execution under 20f. was not introduced by him, but added in committee. He admitted the necessity of making salaries and pensions liable to creditors, but stated that the Inspector of Prisons had borne testimony to the beneficial effects which the act had produced, and he believed it had not diminished wholesome credit.

### House of Commons.

*Clerks of Sessions*.—Sir James Graham has given notice of a bill to regulate the appointment and payment of Clerks and other Officers of the Courts of Petty and Quarter Sessions of the Peace, Oyer and Terminer, and Gaol Delivery; and for the better regulation of Medical Practices.

*Law of Settlement*.—Sir James Graham also brings a bill forward as to the Law of Settlement.

*Poor Laws*.—Mr. Manners Sutton has also given notice of a motion for a Select Committee on the Administration of the Law for the Relief of the Poor in Unions under Gilbert's Act, 22 Geo. 3, c. 83.

*Railway Companies, &c.*—Lord Granville Somerset has brought in bills to Consolidate Railway Clauses and the Clauses of other Public Companies.

*Roman Catholics*.—Mr. Watson has given notice of a bill for the further repeal of enactments imposing pains and penalties on Roman Catholics on account of their religion.

*Punishment of Death*.—Mr. Ewart intends to introduce a bill for the total abolition of the punishment of death.

## THE EDITOR'S LETTER BOX.

WE are obliged by the communication of T. W. H., on the certificate duty, and will avail ourselves of it.

The letter on the Manchester Law Association shall be considered.

We thank B. and Cvis.

The case of Malpractice stated by P. R. A., shall be inserted.

In the case of *The Queen v. Inhabitants of Heanor*, p. 270, ante, 2nd column, 11th line, the words in inverted commas, "shall consist," should be "shall consist."

We are informed that the Vice-Chancellor of England, in the case of *Cooke v. Bowen*, has overruled the former decision in *Abraham v. Newcombe*, noticed at p. 274, ante, relating to an infant *feme covert*.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 15, 1845.

OF THE

PUBLISHED, AT THE OFFICE OF THE OBSERVER, 15, MARK LANE.

1845.

### SHOULD THE TRANSFER OF PROPERTY ACT BE AMENDED OR REPEALED?

We return to the Transfer of Property Act without any fear of fatiguing our readers as to the general subject. This indeed requires all the time and attention that can be bestowed on it. Up to this point we have been able to give sound advice to our brother practitioners in a somewhat difficult aspect of affairs, and we believe it has been generally followed. We may therefore, perhaps, be permitted to restate the course that we have taken. When the act was brought in we stated our approval of its general objects and intentions; but a very little time showed us that without great care and many alterations it would be attended with serious inconvenience and difficulty in practice. When, therefore, at the end of the session the bill, which had appeared to have been slumbering, was revived with many important alterations, with the object of passing it into law, we strongly objected to it. It passed, however; and it then became our duty, as we think, not to obstruct it, but to endeavour to facilitate its operation in practice: and this, therefore, was the course that we pursued. When, however, the profession came to look at it with the view of acting on its provisions, a host of doubts and difficulties started up, and it became almost impossible to find out the actual meaning of the legislature,

or if it were discovered, to carry it into operation. Under these circumstances, it appeared to us that two things must be done. The act must be materially amended, if not repealed; and until this was done it would be better in no possible way to notice it or act under it, but to continue precisely the same practice in all conveying transactions as before it became law. We are not so vain as to suppose that the course that has been pursued or the steps that have been taken are in consequence of the advice or recommendation that we have given; still we think we may say, that as we have kept this subject constantly in view for many months, our exertions have not been entirely without effect. But be this as it may, we have had the gratification of seeing that in the first place the act has not been followed in practice, (it is impossible to say that it has been disregarded, so long as it remains on the statute book,) and no alteration has been made in existing forms in consequence of its provisions; and in the second place, the Lord Chancellor, on the very first day of the session, announced his intention of bringing in an act for the purpose of amending the act. His lordship said that it would be ready in a few days; and it is this statement that induces us so soon again to advert to this subject.

We sincerely trust we are not to have a series of reforms on this branch of the law. It is a most inconvenient and hazardous thing to keep up a petty system of legislation on the familiar assurances of the land,—on the common forms in daily use. No one, we are sure, will see more readily than the Lord Chancellor himself,

\* See our number for July 27, 1844.

if he allows his acute and vigorous understanding to apply itself to the subject for one moment, that here the worst harm that can happen is an unsettled practice. That there are evils in the present system to be remedied we do not deny, but the experience of this very act is sufficient to show how difficult it is to remedy them, and that it is possible to perish in the attempt. We give the Lord Chancellor full credit for a desire to do the best in the matter; we do then entreat him to legislate *once and for all* on this point, otherwise — to use a happy illustration which we have seen applied to another subject—the unfortunate profession, and through them the still more unfortunate public, will be, during the process of successive legislation, much in the condition of M. Majendie's dogs, with their heads laid bare for a series of scientific experiments.

There is only one course to be taken under the circumstances, and we are persuaded that the sooner it is followed the better for all concerned. The Transfer of Property Act *should be repealed*. It is hopeless to attempt to amend it. Let it be remembered, that so long as it remains on the statute book *it must affect all transactions and dealings with property, whether the parties wish or intend it or not*. We shall have a period of our legal history against which it will be necessary to have a black mark, to call special attention to everything that was done under it. The act may be amended, but it cannot be destroyed; and its provisions must be carefully known and studied for many, many years. There will be a portion of all abstracts of title which will resemble the blank in a Scotch pedigree—*here happened the deluge*. There will be an interregnum; a period when confusion and anarchy will and must prevail. This much is admitted. But the duration of this unhappy state of things may be limited. It is in the power of the Lord Chancellor. With the many cautions which have been used, if only six weeks or two months are allowed to elapse before the act is repealed, but little harm can be done. It will however be widely different if this step be not taken forthwith. An amendment act is promised *in a few days*; but is not this to fall again into the error of curing hasty legislation by means of hasty amendment? It will be no easy or common matter to amend this act; it is in its nature extremely difficult. Professional

attention is now called, and most properly, to the subject. The Lord Chancellor, we are satisfied, will be ably advised in this matter; but we defy human ingenuity to devise a bill, proceeding on the principle of the original act, which will at once allay the storm. The new bill must and should be carefully scrutinized; and time must and should be allowed, if worse evils are not intended. But in the mean time the act remains unrepealed; the Jonah remains in the ship.

The only safe and proper course then, in our opinion, is to repeal the act, and to take full time to consider a proper substitute. If this course be pursued, no blame can fairly be imputed to the Lord Chancellor. And if a precedent be wanted, a late and familiar one may be found in the Bankrupt Act, 6 Geo. 4, c. 16. Many of our readers will remember that a Bankrupt Act was passed in the preceding session, which was found to be defective; Lord Eldon, then Chancellor, did not attempt to amend it, he repealed it; and the present Bankrupt Act has always been admitted to be an able performance. We most respectfully submit that this is the proper course to be followed in the present instance.

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## TAXATION OF SUITORS.

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IN the number of the *Law Review* just published we find an important article as to the inequality of taxation among suitors, which we feel bound to bring before our readers. It is called "The Legal Budget," and commences with the following statement:—

"The suitors at law and in equity are taxed to the judicial exchequer for the mere support of those establishments to the enormous extent of from 300,000*l.* to 400,000*l.* a-year. But in assessing this tax every recognised principle of public taxation is set at nought; and in collecting it there is an utter absence of all arrangement to secure the transmission of the money raised into the judicial or public purse: 300,000*l.* or 400,000*l.* a-year (there is no one who can by possibility know the precise amount) is assessed upon the suitors (that is to say, upon the *subjects* of the judicial empire), upon principles utterly abhorrent to all our first ideas of justice; and this enormous sum of money (and how much more is a mere matter of conjecture) is then collected by about 200 fee-bailiffs, and the 300,000*l.* or thereabouts is received from them in full for their receipts, without the slightest pretence of

checking their accounts, and, as to two-thirds of them, without even requiring any affidavit or averment of the correctness of the amount. Thus recklessly is our poor suitor dealt with! He not only has to pay, when he ought not to pay, to maintain the public judicial establishments, that from them he may get, by means of complicated, conflicting, and defective systems of procedure, the justice which the public interest in his person requires; but what he does pay is extorted from him on the most confessedly unjust principle of taxation ever yet invented—by a poll-tax; and when it is extorted, finds its way into the judicial exchequer, just so far as the conscience or the prudence of 200 uncontrolled fee-takers may determine, no small sum doubtless staying somewhere by the way.”

How then is this to be remedied? The following points, says the writer, should be attended to. “The legislature should take care—

“1st. That the suitors are taxed fairly as between rich and poor; the rich suitor paying in some proportion to the amount at stake.

“2nd. That the taxes are imposed in the best way.

“3rd. That all the money taken goes to its object, and that there should be no leakage in the conduit pipes.

“We have already stated that none of these objects has yet received any systematic legislative attention. We need hardly add that they are all of them farther from being effected than can well be conceived.

“We have also stated that the present position of our judicial fiscal arrangements is altogether owing to the system which, until the present day, has pervaded all our courts—of treating justice as a thing to be sold, and official fees as a matter of private personal right and property. To a great extent, this barbarous system is done away with, but much remains still to be done. The Duke of Grafton, for instance, we believe, in the character of the Sealer of Writs, is still entitled to exact, and continues to exact, a fee from every person who has to seek the assistance of the courts, either of Queen’s Bench or Common Pleas, for the recovery of any, the most trumpery, civil right. He renders in this capacity no useful service whatever to either suitor or judge. He is a pure janitor of the courts—a taker of toll from every suitor who walks into them. Though no service is done by him, an income of probably, at least, 2000*l.* a-year is levied by him. There are still existing many other cases of fees taken by the officer for his own use. The judges, both at law and in equity, unfortunately have still permitted their own personal officers (secretaries, &c.), to continue to be fee-taking officers. The marshals and associates of the judges, and other fee-takers at *nisi prius*, for instance, still receive head-money from plaintiffs, amounting to above 4*l.* on each trial, a very serious tax indeed on actions for small debts.

“There is also a newly-created fee, which belongs to this class of tax, and is, in many respects, one of the most objectionable specimens of them—i. e. the copy money in the equity master’s offices. The under-clerks are allowed to take to their own use 1*½d.* for folios of 90 words for any copies made in those offices. Without alluding to anything now going on, it will be enough to say that their power of affording facilities to the solicitors has too often enabled them to get copies bespoken and paid for, which are not only not wanted, but are never, in fact, made; and the common interest which they and the solicitors have (the emoluments of both being almost altogether dependent on the length of the documents taken into the office) in counting forty, fifty, or sixty words as ninety, coupled with the absence of all check on their doings in this respect, can hardly be supposed to have tended to improve the honesty of either solicitor or under-clerk, or to keep up that public respect for the purity of the *officina* of justice which it is so desirable for the moral tone of the community should be maintained.”

A word as to the inequality of the present system among suitors:—

“A poor man has to file a bill to obtain payment of a 100*l.* legacy. A rich man has to file one to obtain a 100,000*l.* legacy. Each pays exactly the same fee, of the same amount, in every stage. There is 5*s.* 6*d.* charged to each on issuing a subpoena; 1*l.* to each on filing his bill: each bill is probably of the same length: each is compelled to take an office copy of the answers, whether he wants it or not: each pays the same price per folio for such copy. The interlocutory orders for payment into court, production, &c. cost each the same—altogether 20*l.* or 30*l.* a-piece—each has to pay the same fee of 3*l.* 10*s.* for his decree. When in the Masters’ office the rich man pays no more for his warrants or reports than the poor, though the matters he is dealing with there are respecting hundreds and thousands of pounds, while the poor man is dealing only with shillings and pence. So the thing goes on to the end. True enough is the old saying, that ‘Chancery is the cheapest steward for a large estate, while it devours the whole of a small one.’ Now this is a palpable and most enormous injustice. Name it, and it is a disgrace to all who do not forthwith attempt to remedy it.”

We can only afford room for one more extract, which lays bare the nature and extent of the evil:—

“The third point to be attended to in levying any tax is, of course, to take care that all money collected really goes into the judicial exchequer. This is only provided for in the Equity Courts by requiring certain officers to make an affidavit, from month to month, that they are paying in a true balance. But in equity there are about 105 or 110 individuals,



officers or subordinates, who actually take cash from the suitors, while only about forty of these undergo the salary ordeal by which alone their faithful accounting for their stewardship is now professed to be secured. The other officers or subordinates account, or should account, and in some way or to some extent, to these forty. But how far this sub-accounting does take place, and under what securities as to accuracy, no one knows. There is no legal provision for it—no check whatever.

"Now, let us suppose some subordinate officer with a place known to produce him 600*l.* or 700*l.* a-year; and he is known to keep his carriage; that he has a wife, and, perhaps, other not creditable sources of expenditure besides; that, in respect of his office, he contributes to the suitors' fund a sum so small that it is the public remark of the practitioners; that there are, perhaps, parliamentary returns showing a proportionably large quantity of business to be transacted in it; that this man dies; that the same office, under his successor, immediately contributes double to the suitors' fund; and that it turns out, that (with all the personal expenditure our subordinate indulged in) he left behind him a large property;—would such a case be investigated on behalf of the public or the court? Certainly not. This case must be looked on as imaginary. To deal in personal accusations would be very foreign to the object we have in view; but we must, notwithstanding, protest against its being assumed that such a supposition as we have now been putting may be founded in fact. Let there be some effective system of fiscal control put in operation, and we are confident it will soon appear that there was most ample reason for the change.

"But we have passed by the Common Law Courts. Here we have about 100 more fee-takers, taking for the public use (for this money goes in great part into the public exchequer) about 150,000*l.* a-year. What check is there on them? Positively none whatever. Money brought is taken by the Treasury without question. Audit of accounts is undreamt of.

"That there should be either a public receiver of fees, or some law fee stamp, as in Ireland, to secure the transmission of all fees taken to the judicial exchequer, admits of no question. The character of the court and its officers, and the pecuniary interest of the suitor also require it. If the present shameful poll-tax is to be continued, and the poor suitor is still to pay as much of the unjust burthen as the rich one, then the Irish plan is, we think, the best; but if any more equitable principle of assessment is to be made, and suits are to pay in proportion to the property at stake, then of course the plan of a law fee stamp will not do, and there must be some well-devised system established of a receiver of fees, and accurate accounts duly audited.

"The Irish mode of collection is grounded on the 1 & 2 Geo. 4, c. 113. Stamps denominated Law Fund Stamps, are furnished from the Stamp Office to proper officers as retailers

or distributors; and by means of these stamps of course the receipt by the public of the whole tax paid by the suitor is secured. It would appear that the officers themselves, till lately, had been allowed to sell these stamps, and that evils had arisen probably similar to those arising from the copy money charge in the offices of the English Masters in Chancery, for by an act of the last session, (7 & 8 Vict. c. 107,) this was abolished.

"If, however, any system of impost, fair as between suits for rich stakes and suits for poor ones is to be adopted, the plan of the *Luxury Per Centage Tax* will, we conceive, be found to indicate the mode in which it is to be collected. The Accountant-General's office will afford a ready machine for realising the greater part of it."

We are quite sure that these startling facts will be duly appreciated by the profession, and we can only call on the judges and the legislature to apply the proper remedy.

## NOTES ON EQUITY.

### BREACH OF TRUST.

THE following case is, we think, new in its circumstances: A trustee in breach of trust lent the trust fund to the tenant for life. The trustee afterwards concurred in a creditor's deed, by which the trustee's life interest was to be applied in payment of his debts, and the trustee received thereunder a debt due to him from the tenant for life. The trustee retained the income of the fund to make good the breach of trust. The trustees of the creditor's deed applied to restrain this application. Lord Langdale, M. R., refused to restrain the trustee. "It is not denied," said his Lordship, "that this was a breach of trust, and that the person beneficially interested in this sum had a right to call on the trustees at any time to make good the amount of stock sold out. \* \* \* What is alleged by the plaintiff is this, that Knight (the trustee) having been a creditor and party to the deed, has so far authorised and directed the application of the income of the trust property to the purpose mentioned in the deed, that he has no right to resort to the interest of Fuller (the tenant for life) for the purpose of performing the trusts of the settlement, and for repairing the breach of trust which had been committed. \* \* \* What is asked is this, that the trustee shall be prevented applying the life estate in making good the breach of trust, and thus leave to chance the reparation of the breach of trust, by confining the remedy to the personal liability of the trustee or the estates of the deceased trustee. I cannot reconcile myself to the notion that this is a course which this court should pursue. The question really comes to this, whether the trustee has done, or could do, or would be

allowed by the court to do, an act which would fetter his power of performing his duty. His first obligation was to perform the trusts; he had concurred in committing a breach of trust, and the instant he found he had done so it was his duty to repair it. And could he be permitted, in violation of his duty, to do an act for his personal benefit by which he deprived himself of the power of performing his duty." *Feller v. Knight*, 6 Bea. 210. This case is in conformity with the rule of courts of equity, which will not permit trustees to do an act which would be a breach of trust. *Mortlock v. Buller*, 10 Ves. 292; and *Wood v. Richardson*, 4 Beav. 74.

## THE EXPECTED NEW ORDERS OF COURT.

WE lately adverted to the evils of the present mode of preparing legislative measures, and feel bound to notice also the objectionable course of proceeding in regard to New Rules and Orders of Court. The judges, it cannot be doubted, intend in the most cautious manner to effect only necessary and material improvements, and we believe that in projecting such alterations they consult the officers of the court and some of the practitioners. Thus assisted, many valuable rules and orders have been made, but it is well known that many rules and orders have altogether failed of producing the good effect that was intended, and in fact have produced more delay and more expense in legal proceedings than previously existed.

Let it be recollected, that many of the rules and orders of court, whether at law or equity, are, in nineteen cases out of twenty, as important, not only to the profession but the public, as any legislative enactment. Now imperfect as may be the mode of preparing acts of parliament, there is this fairness in conducting them, that none can be taken by surprise. However objectionable a measure may be, there is at least an opportunity afforded of hearing the grounds of opposition to it. Occasionally it happens that a bill is hurried through parliament, and little time is allowed to canvass its effects, but it is always in the power of its opponents to gain time for the discussion of the merits.

Now we respectfully submit that where any large and important change is contemplated in the practice of the superior courts, the bar and the solicitors should be previously made acquainted with them. These alterations should not be kept, like a financial project which it may be expedient to keep secret, till the moment arrives for

its announcement, and which even then is open to discussion before it is adopted.

This matter becomes the more important when, according to a decision of the Lord Chancellor a few days ago, it appears that orders made in pursuance of the powers given by the recent statute cannot be relaxed by one of the equity judges,\* but must be made the subject of another general order. Thus in many cases great hardship will be inflicted.

## TAXATION OF SOLICITORS' BILLS.

It not unfrequently happens that an application is made under the recent statute of 6 & 7 Vict. c. 73, by petition at the Rolls for an order of course to tax a solicitor's bill, and that the ground of the application is, not merely that the bill contains excessive charges, but that as to a certain portion of the bill it contains charges for business, which was not done on the retainer of the client but on that of some other person, and therefore, that these charges ought not to have been made out against the client at all. In such a case it is obvious that the petition presented, and on which it is intended to found the order for the reference to the Taxing Master, ought to contain an allegation calculated to meet the case intended to be supported.

Notwithstanding, however, that such an objection is intended to be raised to the charges contained in the bill of costs, it almost always happens that the solicitor employed to tax the bill, has omitted to insert in his petition an allegation to the effect which we have mentioned, having contented himself with adopting the common form of petition which has been lithographed by the law stationers, and which form contains no other allegation except "that the bill of costs contains extravagant and unreasonable charges."

It is under these circumstances that a question has, as we understand, on more than one occasion recently arisen before the Taxing Masters, whether on a petition thus framed, it was open to the party taxing the bill to raise the point of retainer, even though it applied to a portion only of such bill, and whether the general admission in the petition of the employment of the solicitor without any words of exception or qualification added to the submission to

\* See page 307 post, and *Needham v. Needham*, 25 L. O. 505.

pay what should be found due upon taxation did not virtually amount to an admission of retainer as to the whole of the business charged for, reserving the question only as to the excess of charge.

We would accordingly venture to call the attention of the members of the profession to the above subject, and to suggest that it will be expedient, in a case where an objection to the bill of costs like that which we have mentioned is intended to be raised before the Taxing Master, to avoid adopting the common stationer's form of petition, and to frame the petition so as to meet the question properly. This can easily be done by inserting in the petition an allegation to the following effect:—  
 "That in the said bill of costs there are included various charges for fees and disbursements claimed to be due to the said ———, in respect of matters not done on the behalf or on the retainer of your petitioner, but which if done at all were done on the behalf and on the retainer of some other person or persons, and which charges ought not, as your petitioner is advised, to have formed any part of such bill of costs, and ought, therefore, either to be struck out of the same or else to be wholly disallowed against your petitioner."

#### DELIVERY AND COUNTERMAND OF A WRIT OF EXECUTION.

WHERE a writ is delivered to a sheriff with a suggestion that the following morning will be the best time to execute it, and afterwards a written order is delivered to the sheriff, directing him not to execute the writ till further orders, such order amounts to a countermand of the writ and is equivalent to the withdrawal of the writ. Goods, therefore, which are seized under a writ subsequently issued, but which are sold upon the recd of the countermand to the first writ, and sold as if under the authority of that writ, and the proceeds paid to the person who issued it, are wrongly dealt with by the sheriff. They ought to be considered as goods seized and sold under the second writ, and their proceeds must in the first instance be applied to satisfy that writ.

\* As to the distinction between the striking out and the disallowing an item in a bill of costs, see *White v. Milner*, 2 Hen. Blac. 357; *Rigby v. Edwards*, appendix to "Beames on Costs," No. 24, p. 255; and what is there said by Lord Eldon, C., and the judgment of Parke, B., in *Morris v. Parkinson*, 2 Crompt. M. & R. 178.

In the case in which these points were decided, the facts appeared to be as follow:—On the 1st June, A. B. delivered to the sheriff a writ of *f. fa.*, with a suggestion that the next morning would be the best time to execute it. Before that time arrived, the debtor had offered terms to A. B. to suspend the execution. These terms were accepted, and A. B. then by a written order directed the sheriff not to execute the writ till further orders. On the 7th June the plaintiff sent in a writ of *f. fa.* against the goods of the same debtor, and this writ was immediately executed by seizure of the goods. On the 9th of June, the terms offered to A. B. not having being performed, A. B. ordered the sheriff forthwith to execute the writ. The officer to whom it was entrusted went to the debtor's house, and found a bailiff already in possession under the plaintiff's writ. The sheriff, however, directed the goods to be sold under A. B.'s writ, and handed over to him the proceeds of the sale. The court recognized the authority of *Barker v. St. Quintin*, 12 Mee. & W. 441, which decides, that after a direction by a plaintiff to a sheriff not to execute a *ca. sa.*, the sheriff, if he does so, becomes a trespasser, and that consequently the directions here given amounted to a withdrawal of the writ. The cases of *Kemland v. Macpaulay*, 1 Peake, N. P. C. 96; *Pringle v. Isaac*, 11 Price, 445; *Smallcombe v. Cross*, 1 Lord Raym. 252; and *Bradley v. Wyndham*, 1 Wilson, 44, do not show the mere first delivery of a writ, where fraud is not imputed, will give it precedence over others. *Hunt v. Hooper*, 12 Mee. & W. 664.

#### ANNIVERSARY OF THE MANCHESTER LAW ASSOCIATION.

Having in a former number stated the resolutions passed on forming "The Provincial Law Societies Association," (see p. 224, *ante*), and the report of the Manchester Law Association for the past year, (see p. 260, *ante*), we proceed now to extract some of the observations made at the anniversary dinner, at which deputations were present from various other societies, viz:—

Mr. Thomas Eyre Lee and Mr. Arthur Ryland, Birmingham; Mr. George Hicks Seymour and Mr. Thomas Hodgson, York; Mr. John Hope Shaw, Mr. Richard E. Payne, and Mr. John Sangster, Leeds; Mr. Charles Frost and Mr. C. H. Phillips, Hull; Mr. John Freeman, Huddersfield (West Riding Society); Mr. James Westell, Witney, Oxfordshire, and Mr. John Marriott Davenport, Oxford; Mr. Thomas Avison, Mr. Ambrose Lace, and Mr. J. Eden, Liverpool; Mr. Julius G. Shepherd, Faversham, Kent; Mr. Edward Knochner, Dover; Mr. John Sharp and Mr. J. H. Shereson, Lancaster; Mr. J. Bourne, Alford, Lincolnshire; Mr. E. A. Bromehead, Lincoln; Mr. Henry Abbott, Long Ashton, Somersetshire.

There were about eighty gentlemen present, including several resident in the neighbouring

towns included within the limits of the association.

Mr. R. H. Wilson, of Mosley Street, the president for the ensuing year, occupied the chair, and was supported on the right by Alexander Kay, Esq., Mayor of Manchester; and on the left by G. H. Seymour, of York, president of the newly-formed union of Provincial Law Societies. Mr. Joseph Heron, town-clerk of Manchester, and Mr. Nicholas Earle, officiated as vice-chairmen.

The *Chairman* said, he should be totally insensible if he did not feel that it was a very high honour to preside over such a numerous, influential, and learned body as he now saw before him. He gave "The Manchester Law Association, and prosperity to it;" in doing which he said it might appear, at first sight, that they were drinking their own healths as private individuals; but when it was considered that they were drinking success to the exertions of a body of men who had associated themselves together, not for the benefit of the profession alone, but for the good of the public, the objection immediately vanished. He would not make any lengthened observations upon the great advantages that had, and would arise from that association and other similar associations, but would leave that to be done by their friend Mr. Heelis, upon whom he would call to respond to the toast. That gentleman, he might observe, had, from the first establishment of the association, been one of its most active and efficient supporters.

Mr. S. Heelis said, he should ill discharge the duty imposed upon him if he did not, on behalf of the members of the association, insist that it did not originate simply from a wish to benefit the profession, but from circumstances which showed the necessity of protecting the interests of the public. That was not the only occasion in which its services had been directed to the protection of public interests; and although he should be sorry to affect that they did not also endeavour to look after their own, yet he hoped the day would never arrive when they should not make their own private interests subservient to those of a higher class. He had frequently had compliments paid to him for attention to the interests of the association, but he thought the climax of their exertions had arrived, because they had that day associated themselves with other similar societies, he believed for very great public benefits, and he hoped also for their mutual special advantage. It had been said that day, that the Manchester Law Association had on various occasions come forward, and probably they had borne a great deal of the brunt of the battle, although the original suggestion for a general union was not with them. However they should be happy, as an association, to do all they could to carry out those objects which were not only more particularly within their province as a local association, but also those which related to the interests of the profession and the community in other parts of the kingdom.

The *Chairman*, in proposing the next toast, said, the great advantage arising from law associations, and the absolute necessity for a general union of them, were facts so well known, that it was unnecessary to offer any remarks upon those subjects. The advantages, amongst others, which arose to the public and to the profession from law associations, were the promotion of the respectability of the profession generally; the promotion of liberal, fair, and honourable practice amongst them; the putting down of all petty practices, which were alike injurious to the public and to the profession. But there was another and still more important benefit derived by the profession. Those associations tended to bring them together as men and brethren, to create friendly feelings amongst them, and confidence in each other; and he need hardly point out the advantage the public would derive from the existence of a good understanding amongst the professional men they employed. He considered the fact of a professional gentleman being a member of one of the law associations quite sufficient to create confidence in the honour and integrity of his intentions, and that he would adopt every fair practice in his intercourse with members of the same profession.\* And with respect to the necessity for forming associations, the transactions of almost every day tended to convince them of it, in order to protect their rights and interests, and to put down the encroachments which were daily practised upon the profession. He would now give, "The Law Associations forming the provincial union of law societies, with our best wishes for our future union and prosperity." He would couple with the toast the name of Mr. Seymour, of York, who had been elected president of the united association for the ensuing year.

Mr. G. H. Seymour said, the honour which had been conferred upon him, in electing him president of the newly formed association for the ensuing year, was entirely unlooked for on his part; and he attributed his election, not to anything which was due to himself, but to the society which he represented, which was the parent of those societies, though now outstripped by some of her children. However, be that as it might, he considered his election a high honour; and whatever exertions might be wanted on his part, he should consider it both a duty and a privilege to render them to the best of his ability. He had had the honour of being introduced to the respected gentlemen who filled a high civic station in this town. It so happened that, in the city of York, the chief magistrate (Mr. William Gray), was also a member of the legal profession, and he (Mr. Seymour) was in office as chairman of the city commissioners. He did not mention this as a matter of pride; but as showing that, if gentle-

\* Our readers will heartily approve of these excellent objects of the several societies, which are thus ably stated by the several speakers.—  
ED.

men of their profession would observe a respectable mode of conduct, the practice of the profession was no bar to obtaining civic honours.

The *Chairman* said, the toast he had to propose followed very appropriately after the observations of Mr. Seymour, and when he announced that it was "The health of their respected guest, Alexander Kay, Esq., Mayor of Manchester," he was sure it would be received in the manner it deserved. The merchants, who stood first and foremost in this town, and who had not, he was sorry to say, the highest opinion of the legal profession, though very unmeritedly so, had conferred a high honour upon the profession, when they had been obliged to come into their ranks to select the best mayor that had yet filled the civic chair of Manchester. He (the chairman) did not say this because Mr. Kay was present, having an objection to paying compliments; but what he had stated had been admitted on all hands, and had been so often expressed, that he felt himself exonerated from all difficulty in alluding to it.

Mr. Kay said, he knew not why he should have been selected by his fellow-townsmen to fill twice the high office of chief magistrate. He never expected, ten years ago, that it would be his fate and fortune to be placed in such a position; and the only feeling he entertained was, that during the period he had held the office, he hoped he had done no discredit to the profession to which he belonged. His position was a very simple one; and there was not a gentleman in the room, who, by following the same course, might not attain to the same honours if he chose to set about it. He claimed for himself no particular talent; but if there was any one thing more than another to which he owed his present position, it was to a constant assiduity in his professional career, and his determination, under no circumstances, and under no views whatever that were presented to him, ever to forget the interests which were confided to him. It was sometimes difficult for a professional man to ascertain what the true interests of his clients were; but if he kept those interests steadily in view, he would not make many mistakes of an important character. But, leaving this, he would turn to a subject much more agreeable to himself, namely, the progress and prospects of the Manchester Law Association. It might not be known to the strangers in the room, that he had not the fortune to be a member of the present association; and the reason would be well known to some. There was a great deal of party feeling, in consequence of the struggle which followed the reform bill. He was apprehensive at the time, that, in an association of so large a number of individuals, possessing such a powerful influence on society, it would be very easy for people who chose to swim on the surface at all times, to turn the association into a political engine; and he felt that all its usefulness would be destroyed, if it happened to be so used. He could not avoid bearing his testimony to the entire absence of any such feeling at the present

time; and also that the Manchester Law Association had done much to suppress that feeling, which every gentleman knew to have prevailed, and which, he had no doubt, all of them were happy in thinking was now fast passing away. He could not omit to notice the service rendered to the public by the law association, in the withdrawal of the sales of property from public hotels, and carrying them on at the rooms of the association, at an early hour of the day. He felt persuaded, that that was an alteration for which clients would have reason to be thankful hereafter. The establishment of the "Law Exchange," as it was termed, would also be of great public utility; and the members of the association, he had no doubt, would have reason to be proud of it. Not being a member of the association, he perhaps ought to apologise for having alluded to those subjects; but he felt it due from him to state the mode in which he had watched their conduct, and that he most highly appreciated the services which they had rendered both to the profession and the public.

The *Mayor* proposed "The health of Mr. Wilson, the president of the association for the ensuing year." He (the mayor) had known Mr. Wilson for thirty years; and, during his residence in Manchester, he had established a reputation for skill and integrity which was well known to every member of the profession.

The *Chairman* acknowledged the compliment, and said, he would take the present opportunity of suggesting, as a means of still further extending the usefulness of the association, that some provision should be made for the charitable support of members of the profession in advanced periods of life, who might not have been so successful as others, and also of the families of deceased members when left in a state of distress.<sup>b</sup> He merely threw out the suggestion, thinking the association might take it into consideration at a future time.

Mr. James Crossley, in proposing the next toast, "The committee of management for the past year," said, he believed there never was a period since the origin of the association in which so much valuable time and active exertion had been devoted to its interests as during the period since the last annual meeting. When he looked back from their present position, and saw how much had been accomplished in, comparatively speaking, a short period of time, he could scarcely place any limits to their future progress. He little thought, at the meeting at which the society took its rise, and at which he had the honour to preside, that he should be present at such an assembly as the present, combining so large a proportion of the respectable solicitors of this district, with the municipal head of Manchester, and a number of friends and distinguished

<sup>b</sup> In London there is already an association for the families of deceased members of the profession, and a kind of college for aged solicitors is also projected.—ED.

ornaments of the profession from various and distant parts of the kingdom. He little thought that he should have the privilege of sitting an admiring auditor in a sort of legal lyceum of their own, and hearing from a worthy and accomplished member of their body, whom he was glad to see present on that occasion, deliver, to a numerous class, as able a lecture as ever came from the professor's chair. He hailed the union of societies that day formed, having a firm conviction that all their efforts would be required, if they maintained their place as an integral part of an enlightened profession; as a body of men to whom the public might look with confidence for the discharge of duties for which the highest moral qualifications, as well as the highest intellectual powers, were required. At present, he looked upon their state to be somewhat analogous to that of a beleaguered citadel, assailed on all sides, and their members as the selected victims of that erratic legislation, which, seizing the subjects of its experimental philosophy rather for its own amusement than for their improvement or for the public necessity, required every vigilance in order to avert the evils of its most mischievous activity. From the stream and tendency of legislation, indeed, as applied to their body, it might almost be considered that the public were alarmed at their plethoric habits, and were consequently calling to the quack doctors of the state to reduce them to what Falstaff would call "reasonable dimensions" by a perpetual succession of parliamentary drastic medicines, never forgetting the lancet and the blister. But he did say, and it was a most singular fact, that theirs was the only body or class of public men who, in the exact proportion as they had endeavoured to merit encouragement from the legislature, in exactly the same proportion had they received systematical discouragement. He could give, were it necessary, fifty instances to corroborate the truth of what he had asserted, but it was perfectly unnecessary to do so in the present company. To combat, however, that unwise and partial spirit by efficacious, yet by legal means, it must be admitted that a general movement of associations was necessary; and with the increased resources and energy which would be derived from the union that day cemented, he entertained no doubt that in future the fair claims of the body of solicitors would be fully maintained and upheld, in so far as they were consistent with the interests of the public; and to that extent only as a body did they require to be considered and protected.

The *Chairman* then gave, in highly complimentary terms, "The health of Mr. Thomas Taylor, honorary secretary to the association."

Mr. Taylor returned thanks, remarking that from the first he had been sanguine as to the success of the association; but the result had exceeded his highest expectations, and had amply rewarded him for his exertions.

Mr. Cooper gave "The Incorporated Law Society."

Mr. *Eyre Lee*, of Birmingham, as a member of that society, acknowledged the toast, and said that no provincial law society need hesitate to correspond with the society in the metropolis whenever they wanted assistance.

The *Chairman* then gave "The Corporations of Manchester and Salford."

Mr. *Heron* responded on behalf of the Corporation of Manchester. He did not know any class of men upon whom corporations were more dependant for support in carrying out the objects for which they were instituted, than upon the members of the legal profession. An effort would be made next session to obtain a court of record for the borough of Manchester; and probably the most important improvements that could be suggested in the bill would be by the members of the law association. All he could say was, that if the members of the association would read over the bill when it made its appearance, any suggestions which they might make would be taken into consideration, and would most probably be acted upon.

The meeting was also addressed by Mr. G. *Thorley*, of Manchester, Mr. J. G. *Shepherd*, of Faversham, Mr. *Bourne*, of Alford, Mr. *Charles Gibson*, Town-clerk of Salford, Mr. J. *Grave*, of Manchester, Mr. *Summercales*, of Oldham, and Mr. N. *Earle*, of Manchester.

#### SUGGESTED IMPROVEMENTS ON THE ABOLITION OF ARREST.

SIR.—I could from my own practice parallel the cases of hardship imposed on creditors for debts under 20*l.* by the late statute, narrated by your correspondent T. W. H., but will not fill your pages with matter which must be familiar with every common law practitioner. I only beg to inform your correspondent, that a defendant having tried upon me the trick of threatening that his goods belonged to a third person, I, notwithstanding, sent a copy of his letter to the sheriff's office, with the warrant on *fi. fa.*, adding, that I should not submit to such a palpable fraud, and that I expected the sheriff to do his duty. The consequence was, that I received the debt and costs by return of post, and the officer was not in defendant's house half an hour before the money was forthcoming, and I would suggest that if in similar cases plaintiffs' solicitors would insist on the sheriff taking the responsibility of not levying, debts would often be recovered which are lost through the timidity of the officer.

But, sir, it is said that we are to have a remedy next session for the present notoriously defective state of the law, which punishes the creditor for the sins of the debtor, and which, with unheard of injustice, takes away the remedy, on the faith of which debts were permitted to be contracted; and if you think the following suggestions to the intended legislator would be of any avail, I shall be glad to see them in your influential pages, in this or any shape you may deem best.

I propose, sir, to abolish imprisonment for debt after judgment in all cases, and of course abolish the Insolvent Debtors' Court.

In lieu of the *ca. sa.*, I would empower the creditor, on affidavit, with a copy of the judgment annexed, to obtain, as of course and for a trifling fee, a writ of *venias* citing the debtor to appear within eight days from service thereof before the Commissioners of Bankruptcy of his district, there to show cause why he should not file a general balance-sheet and schedule, and submit to the provisions of 7 & 8 Vict. c. 96, within days.

In default of obedience to the *venias*, on affidavit of personal service thereof, and debtor's default, let a *ca. sa.* and warrant thereon issue, and the sheriff act as heretofore, and let the defendant lie in gaol until he files his petition to the Court of Bankruptcy; which empower him to do immediately on caption, (even, if thought necessary, let the officer keep him 24 hours before taking him to gaol, as was formerly the case under a *capias*.) and require only that the accompanying schedule shall be filed three days after petition, so that he may have time to prepare it after his release from gaol.

This is a hasty sketch of what I suggest as a substitute for imprisonment for debt, for which I am not an advocate, provided the creditor has a corresponding sufficient remedy given to him, and on the above plan, no one can be committed to prison except by his own voluntary neglect to give up his property to his creditors.

As to the debtor showing cause on the *venias* against filing his petition, and under it distributing his estate among his creditors, I would observe, that he should instead thereof, be at liberty to make a *proposal* for payment of the judgment-debt and costs; which would be only giving the creditor a just and fair priority, if the debtor were in circumstances to give it.

Further, I would give the commissioner power to commit any debtor, so brought up, to prison for certain terms, for fraudulently assigning his property, for running up costs, &c. &c., or for not fulfilling his proposal, or not filing his schedule after imprisonment and petition, in the latter cases empowering him to clear himself by payment or petitioning.

I would also assimilate the vesting of insolvent's future estate to the present practice, under the old Insolvent Debtors' Act.

Many other suggestions occur to me, but I will not now further occupy your space.

A COUNTRY SOLICITOR.

## FURTHER REDUCTION OF CHANCERY FEES.

ORDER OF COURT,

Wednesday 12th February, 1845.

THE Right Honourable John Singleton, Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry, Lord

Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, the Right Honourable the Vice-Chancellor, Sir James Lewis Knight Bruce, and the Right Honourable the Vice-Chancellor, Sir James Wigram, do hereby, in pursuance of an act of parliament passed in the fifth and sixth years of the reign of her present Majesty, intituled "An Act for Abolishing certain Offices of the High Court of Chancery in England," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:—

That the Taxing Masters and their clerks shall, in lieu and instead of the fee of four pounds, for per centage on the amount of every bill of costs as taxed, mentioned in the third schedule to the order of court of the 26th Oct. 1842, receive and take the fee of three pounds for such per centage and no more, upon all bills of costs brought in for taxation after the 13th Feb. instant.

That this order be entered with the registrar of the High Court of Chancery.

(Signed) LYNDHURST, C.

LANGDALE, M. R.

LANCELOT SHADWELL, V. C. E.

J. L. KNIGHT BRUCE, V. C.

JAMES WIGRAM, V. C.

## PRACTICE IN CONVEYANCING.

### EXCHANGE OF FREEHOLDS.

It does not appear to me that there is any difficulty in A. B.'s case, stated in your number of the 25th of January.

1st. The agreement is clearly within the Statute of Frauds, and the performance of it cannot be enforced by either party.

2nd. The fact of B.'s having formerly purchased of A. under the same title will not justify A. in refusing to deliver a fresh abstract. An abstract must be furnished, even if it were only to show the fact that the title is the same,—how else is B. to know it? A.'s old abstract may too have been delivered to a sub-purchaser, or may be lost, &c. &c., so that common sense, as well as law, would require that a fresh one should be delivered.

ALPHA.

## BARRISTERS CALLED.

Hilary Term, 1845.

LINCOLN'S INN.

January 29th.

Augustin Robinson, Esq.  
Thomas Yate Lee, Esq.  
Wm. Sidney Gibson, Esq.  
Edward Buckle, Esq.  
John Colpitts Dean, Esq., M.A.  
James Lea, Esq., M.A.

Cornwall Simeon, Esq., M.A.  
Alexander Perceval, Esq., M.A.  
James Shank, Esq.

INNER TEMPLE.

James Templeton Wood, Esq.  
Robert Henderson, Esq.  
John Rendall, Esq.  
Frederick Charles Gaussen, Esq.  
George Deane Sismey, Esq.  
George D. Jones, Esq.  
George Davison Bland, Esq.  
Octavius John Williamson, Esq.  
Edmund Round, Esq.  
Henry Thring, Esq.  
Cuthbert Edward Ellison, Esq.  
Alexander Henry, Esq.

MIDDLE TEMPLE.

January 17th.

John Pulman, Esq.  
William Crofts, Esq.  
Richard Paternoster, Esq.  
Sidney Milnes Hawkes, Esq.

January 31st.

John Wood, Esq.  
Charles Forbes, Esq.  
Alfred Wyatt, Esq.  
Edmund John Bridell, Esq.  
Charles Frere, Esq.  
Henry Winfield Crace, Esq.  
John Gregory, Esq.  
Samuel Naylor, Esq.

GRAY'S INN.

January 29th.

George Baker Ballachey, Esq.  
William Redfern, Esq.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by Wm. FINNELLY, Esq., Barrister at Law.]

PRACTICE.—NEW ORDERS.—WANT OF PARTIES.

Where an answer suggests that the bill is defective for want of parties, and the plaintiff does not set down the cause for argument on that objection within fourteen days after answer filed, as directed by the 39th order of 1841, the court has no power to order it to be set down after the expiration of that time. (*Kershaw v. Clegg*, Turn. & Ph. 120, explained.)

This was a motion for an order to allow a

cause to be set down for argument on an objection suggested by the answer that the bill was defective for want of parties. By the 39th of the orders issued in August, 1841, the plaintiff is at liberty within fourteen days after an answer is filed, suggesting that his bill is defective for want of parties, to set down the cause for argument on that objection only. The plaintiff, in this case, having allowed the fourteen days to elapse without setting down the cause, applied to the Vice-Chancellor for an order to have it set down, which application his Honour refused.

Mr. *Bagshawe*, in support of the appeal motion, stated that the bill was filed for accounts of a Joint Stock Bank, in which the numerous shareholders were not all made parties. An answer was put in on the 6th of November last, extending over 327 folios, which the plaintiff's solicitor was not able to submit to his counsel until the 20th. The counsel, after perusing the answer, advised that the objection taken to the bill for want of parties ought to be argued before further proceedings were taken. The plaintiff's solicitor applied to the defendants for their consent to have the cause set down for argument on that objection; such consent being necessary, in consequence of the lapse of the fourteen days after the answer was filed. That application was refused on the 4th of December, and on the 9th the application was made to the Vice-Chancellor, who refused it on the supposition that he had no power to grant it. The learned counsel submitted that the length of the bill and answer, and the other circumstances of the case—the parties chiefly residing in the Isle of Man—afforded sufficient ground to the court to relax the strictness of the order, by extending the time. Where such grounds existed, the courts usually dispense with a strict compliance with its orders, as in *Kershaw v. Clegg*,<sup>a</sup> in respect of this very order.

Mr. *Lloyd*, contra, submitted that, even if the court had power to grant the indulgence, no sufficient ground for it was made out; but, in fact, the court had no power, under any circumstances, to depart from the directions of this order, which is declared by the acts,<sup>b</sup> in pursuance of which it was made, to be now as binding as an act of parliament. In the case of *Kershaw v. Clegg*, the order was made by consent, as appeared from a private note made at the time by Mr. Romilly, the counsel who moved in that case.

Mr. *Bagshawe*, in reply, pressed the expediency of relaxing the order, and urged that the court had a discretion over all its orders.

The Lord Chancellor, after referring to the acts of parliament under which these orders were made, said he had no power to grant the application; these enactments did not leave him any discretion to exercise, for by these enactments, the orders made in pursuance of them, not having, within the time limited, been

<sup>a</sup> *Ubi supra*.

<sup>b</sup> 3 & 4 Vict. c. 94, s. 1; 4 & 5 Vic. c. 53.



objected to by either house of parliament, are made "binding and obligatory on the court, and of like force and effect as if the provisions contained in them had been expressly enacted by parliament." If they had formed part of an act of parliament, he could not be called on to alter or relax them, and it appeared to him that they have the same effect as if they were added in a schedule to the act. To be sure, as the five years limited by the act for the making of such orders have not yet expired, it was competent to him, by calling to his assistance the Master of the Rolls and Vice-Chancellor of England, or either of them, to make other orders to take effect in the same manner. It sometimes happens that the consequence of too much legislation—active legislation—is not always foreseen.<sup>c</sup> He remembered, when preparing the Chancery Orders of 1828, he had at the same time intended to give them effect by act of parliament, like these acts, and had the bill actually prepared, but in consideration that the judges of the court would be thereby deprived of all discretion or power over the orders of these courts under any circumstances, he withdrew that bill. With respect to the case of *Kershaw v. Clegg*, it appeared now that what was done then was by consent; and, therefore, it was no authority for this appeal case, which must be refused with costs.

*Calvert v. Gendy and others*, 10th February, 1845.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### PRACTICE.—INFANT.—ADVANCEMENT.

*The court will not order a portion of an infant's fortune to be applied for his advancement, where he is only entitled as joint tenant.*

THIS was a petition filed on behalf of Augustus Deane and Agnes Deane, who were entitled to a sum of 5,000*l.* 4*l.* per cent. annuities, both of whom were infants, and it prayed for a reference to the Master for the appointment of a guardian and for settling a proper maintenance for the petitioners, and also, that it might be referred to the Master to ascertain whether it would be for the benefit of the petitioner Augustus Deane that he should be articulated to a solicitor, and what sum would be necessary for the purpose. And in case the Master should be of opinion that it would be for his benefit, then that so much of the 5,000*l.* as might be necessary should be sold, and the produce applied in payment of the premium and expenses. The petition stated that Robert Deane, by his will dated 18th December, 1822, gave to his brothers therein named 5,000*l.* 4*l.* per cent. bank annuities, in trust for his son Henry Deane and his heirs. The testator died in 1824, and the son, by his will dated

the 30th December, 1831, gave the same sum, then converted into 3½ per cent. annuities, to the petitioners for their sole use and benefit. The petitioner Augustus Deane was of the age of 19 years, and the petitioner Agnes Deane of the age of 17 years; and there being no other fund from which the expense of articling the petitioner Augustus Deane could be paid, he was desirous that a portion of the 5,000*l.* should be applied for the purpose.

*Bird*, for the petitioners, said, that where parties were entitled to a fund in joint tenancy, and there was an equal chance of survivorship, the court was constantly in the habit of making orders in favour of one for purposes of maintenance; and in *Evans v. Massey*, 1 *Yo. & J.* 196, a similar order was made for the purpose of advancement, although he admitted that the court in that case expressed a reluctance to make the order.

The Vice-Chancellor said he was of opinion the case of *Evans v. Massey* was no authority for the present application; and even if he were to make the order asked, it would be no protection to the trustees, as the matter was before him simply on petition. He would, however, make the usual order of reference for maintenance and the appointment of a guardian.

*In re Henry Augustus Deane*, January 30th, 1845.

#### Queen's Bench.

(Before the Four Judges.)

MANDAMUS.—COSTS UNDER 1 *W. 4, c. 21, s. 6.*

*Where a person was removed from the office of alderman of a borough by a quo warranto information, and the mayor not proceeding to a fresh election within ten days, according to the 27th section of 5 & 6 W. 4, c. 76, and a writ of mandamus was applied for and granted; a rule was obtained calling on the mayor, aldermen, and councillors, to pay the costs of the mandamus, under the 1 W. 4, c. 21, s. 6, out of the borough fund; the court made the rule absolute for the costs of the mandamus, striking out the words, "out of the borough fund."*

Mr. Gunning had obtained a rule nisi, calling upon the mayor, aldermen, and councillors of the borough of Cambridge, to pay out of the borough fund certain costs incurred in obtaining a writ of mandamus. A quo warranto information had been obtained, calling upon a person named Deighton, to show by what right he exercised the office of alderman of the town of Cambridge; the case came on for trial, and judgment was given for the crown, and the costs of the quo warranto were paid by Deighton. By the 27th sec. of the Municipal Corporation Act, 5 & 6 W. 4, c. 76, it is enacted "that whenever any extraordinary vacancy shall take place in the office of alderman of any borough, the council of such borough shall, within ten days after such vacancy shall occur, or a day to be fixed by the mayor for such purpose, elect

<sup>c</sup> Our readers will generally concur in the justice of this observation of the Lord Chancellor.—Ed.

some other fit person to fill such vacancy, either from the councillors or from the persons qualified to be councillors." After the expiration of ten days from the period when Deighton vacated the office of alderman, the mayor not having proceeded to the election of an alderman in the place of Deighton, a writ of mandamus was granted to compel the mayor of Cambridge to proceed to the election of an alderman. The present rule was obtained for the purpose of making the mayor, alderman, and councillors pay the costs of this mandamus out of the borough fund, under the provisions of the statute 1 W. 4, c. 21, s. 6, which places the costs in the discretion of the court, who are authorised to direct by whom they shall be paid.

Mr. Crompton showed cause.

By the statute 1 W. 4, c. 21, s. 6, the costs incurred in obtaining writs of mandamus are in the discretion of the court. The statute only means costs between the parties. The borough fund is not liable for these expenses. The corporate officers have not done any wrong, and they would commit a breach of trust if they paid these costs out of the borough fund. The 92nd sec. of the Municipal Corporation Act directs how the borough fund is to be appropriated, and what expenses are to be paid out of the fund. These are not expenses incurred by the corporation, but by other parties. [Pattison, J. Suppose an action brought and a verdict given against a corporation, how are the costs to be paid?] It is difficult to say that the corporation would be justified in paying such costs out of the borough fund. This writ of mandamus is in fact part of the proceedings of the *quo warranto*, and is granted as a matter of course when judgment of the *quo warranto* is given for the crown. This rule cannot be made absolute in its present form, and if it is sought to make the defendants liable as individuals, then they as individuals have never refused to proceed to the election.

Mr. Gunning, contra.

The defendants are requested to fill up the vacant office of alderman within the time specified by the 27th section of the act, and they say they do not intend to proceed to an election. If the office is not filled up in a reasonable time a writ of mandamus will be granted, *Res. v. McKay*.<sup>a</sup> If the corporation pay these costs they will be entitled to receive them out of the borough fund. It is said the defendants were ready to proceed to an election, but they doubted whether they had power to do so. Suppose the objection that had been taken to Deighton had affected the title of all the other aldermen of the borough, the consequences to the inhabitants might have been most serious if the vacant offices had not been filled up. These are expenses incurred in carrying the statute into operation. In the case of *Reg. v. St. Saviour's Southwark*,<sup>b</sup> it was held that the wardens, overseers, and inhabitants of a parish were liable for the costs of a

mandamus, but that they could not be held personally responsible.

Lord Denman, C. J. This was an application for a rule, calling on the defendants to pay the costs of a mandamus commanding them to proceed to a borough election, their own default having rendered the mandamus necessary. The rule is drawn up for the defendants to be ordered to pay this out of the borough fund. Supposing that we should be of opinion that the costs in this case are properly payable by the defendants, and payable out of the borough fund, still I think that that is not the proper mode in which this rule should be drawn up. It is not, even though the corporation should as such be liable to pay the money. It is said by Mr. Crompton, that this ought to be treated as an application against the defendants as individuals, and that they as individuals had not refused to proceed to this election. But this is not an answer; what we shall do is to mould the rule. The defendants are called on as a corporation, they are not called on as individuals. The attorney's letter mentioning the borough fund does not bind him, nor do the terms of the rule bind us. We shall say that the expenses so incurred have been necessarily incurred in compelling the defendants to proceed to the election, and that the prosecutor ought not to be compelled to pay the costs which he has thus been bound to incur.

Mr. Justice Patteson. I am of the same opinion as to the liability of the defendants, and my only objection is as to the form of the rule. The act of parliament does not give us power to direct such payment out of the borough fund.

Mr. Justice Coleridge and Mr. Justice Williams concurred.

Rule altered as described, was made absolute.

*The Queen v. The Mayor, Aldermen, and Councillors of Cambridge.* H. T., 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Gerrard v. Reilly*, 3 Dru. & War. 414.

### PENALTY.—ACTUAL DAMAGE.—CONSTRUCTION.

ALTHOUGH formerly where a bond was given to perform an agreement, the obligor had his election to do the thing, or to pay the money; yet now the penalty in the bond is only considered as an additional security for the fulfilment of the contract. Thus, if a lessee covenant not to plough an ancient meadow under a penalty, he shall not be suffered to tender the penalty and then plough the meadow; for that would be inconsonable and manifestly contrary to the meaning of the parties. The penalty, therefore, is regarded as nothing more than an instrument devised to secure the honourable performance of agreements. So, on the other hand, where a breach of the contract is com-

<sup>a</sup> B. & C. 658.

<sup>b</sup> 7 Adol. & Ellis, 925.

mitted, the party complainant is not necessarily entitled to demand the whole amount of the stipulated penalty. The court will look to the circumstances of the case, and to the damages actually sustained. Of this rule, a very striking exemplification occurred in the case of *Kemble v. Farren*,<sup>a</sup> where although the contract expressly declared that the penalty should be rigidly and literally enforced upon breach by either party, yet the court held that the case must nevertheless be dealt with upon the ordinary principle. The defendant was the celebrated actor; who having entered into an engagement with the manager of a theatre, agreed to act for a certain salary, and to conform in all things to the rules of the establishment. The contract went on to provide, that if either party should neglect or refuse to fulfil the engagement, or any stipulation therein contained, the party so in default should pay to the other the sum of 1,000*l.*, which sum was thereby declared by the parties to be *liquidated and ascertained damages, and not a penalty*. Upon a breach being committed by the defendant, the plaintiff brought his action, and argued that he was, upon evidence of the breach, entitled to recover the whole 1,000*l.* But his contention was discountenanced by the Court of Common Pleas; the learned Chief Justice Tindal observing: "It is undoubtedly difficult to suppose any words more precise or explicit than those used in the agreement; the same declaring not only affirmatively that the sum of 1,000*l.* should be taken as liquidated damages, but negatively also, that it should not be considered as a penalty, or in the nature thereof. If, on the one hand, the plaintiff had neglected to make a single payment of 3*l.* 6*s.* 8*d.* per day, or, on the other hand, the defendant had refused to conform to any usual regulation of the theatre, however minute or unimportant; it must have been contended that the clause in question, in either case, would have given the stipulated damages of 1,000*l.*" The court unanimously held, that it was the province of the jury to assess the *real damages* actually sustained by breach of the agreement. The same principle was followed in *Beason v. Gibson*;<sup>b</sup> *Roy v. Duke of Beaufort*;<sup>c</sup> *Hardy v. Martin*;<sup>d</sup> *Astley v. Weldon*;<sup>e</sup> *Peach v. Macale*;<sup>f</sup> *Charrington v. Laing*;<sup>g</sup> and *Boys v. Ancell*.<sup>h</sup> In all these cases the sum inserted by way of penalty, was intended to secure performance of the contract to which it was accessory and ancillary. To construe it otherwise would have been but to encourage fraud, and to induce parties, however firmly bound, to violate their engagements.

Plain as these principles are, and difficult as it may appear to overlook them without upsetting many well-established precedents, both at law and in equity,—the case of *Gerrard v.*

*O'Reilly*, recently decided by the Lord Chancellor of Ireland, seems scarcely to be supported by them. The facts were shortly these. In a lease there was a covenant by Gerrard, the lessee, that he "should not extend or raise a stone weir on the river Blackwater under the penalty of double the rent, therein before reserved; to be recovered by distress or otherwise, in the same manner as the said yearly rent." Upon breach of this covenant an action was commenced for the double rent against Gerrard; who thereupon filed his bill in Chancery, praying that he might be declared entitled to hold at the *single* rent, and that an issue might be directed to try whether any injury had been sustained from the breach. In support of this bill he contended, that the reservation of double rent was merely a penalty, and that the court ought not to permit more than the actual damage to be recovered. The Lord Chancellor held the argument inadmissible. His lordship thus expressed himself:—

"I am clearly of opinion that the case is not one of penalty, but of double rent. . . . There is nothing in the peculiar nature of this covenant to induce me to think that a penalty was meant; it is true that it speaks of penalty; but this, though perhaps a circumstance entitled to some weight, is certainly not conclusive. Now a double rent is provided expressly, and is to be recovered by distress; for as the law gave a power of distress for the single rent, so this covenant provided that the double rent should be recovered by distress. The power of distress implies the relation of landlord and tenant, and therefore rent was meant by the strict sense of the term: in the event mentioned in this covenant, the single was to be turned into a double rent. . . . It is altogether a mistake to suppose that there is one rule at law and another in equity. I am bound to give this lease the same construction which it would receive in a court of law. . . . In my opinion, this covenant merely amounted to the reservation of a double rent in a certain event." Hence it appears that the double rent in Gerrard's covenant, though there termed a penalty, was, in truth, to be regarded as liquidated damages, or fixed compensation, not imposed by way of deterring Gerrard from the breach of the covenant, but giving him a right to do the act in question, if he chose to pay the price. The case altogether is one very much deserving the attention of the profession.<sup>i</sup>

*Stephens v. De Medina*, 4 Q. B. 422.

SALE OF RAILWAY SHARES.—TENDER OF CONVEYANCE BY PURCHASER.

In contracts for the sale and purchase of real estate, the rule has been long settled, that it is the duty of the purchaser to prepare the conveyance, if there be no positive stipulation to the contrary. At the same time it must be

<sup>a</sup> 6 Bing. 141; 7 Bing. 83.

<sup>b</sup> 3 Ark. 395. <sup>c</sup> 2 Ark. 190.

<sup>d</sup> 1 Cox, 26. <sup>e</sup> 2 Bos. & Pull. 346.

<sup>f</sup> 2 Dru. & War. 269. <sup>g</sup> 6 Bing. 242.

<sup>h</sup> 5 Bing. N. C. 390.

<sup>i</sup> See a case in the Court of Exchequer involving the same point, but attended with an opposite result; reported in the "*Times*" of the 12th instant.

admitted that in early times, "when the simplicity of the common law reigned," the preparation of the conveyance was the duty of the vendor. But upon the introduction of complicated modifications of estates, bringing with them all the difficulties which surround modern titles, it became necessary to make an abstract of numerous instruments, for the purpose of being submitted to the purchaser's counsel: and this necessity has been generally received as the reason for the rule which now throws upon the purchaser the duty of preparing the conveyance. In this state of things a new species of property has sprung up, which has been decided not to be an interest in lands,<sup>1</sup> but which is, nevertheless, transferrable by formal deed of conveyance only. We allude to railway shares, which are now the subject of so much traffic and speculation, and with respect to which the question has arisen, whether it is the purchaser's duty to prepare the deed of transfer. Upon the sale of such shares there is no abstract of title to be delivered; no questions of limitations present themselves for investigation; and the early simplicity of the common law seems to be revived with reference to property, of which the ownership seems so easily ascertained and established. This it is which makes it expedient that we direct the attention of the profession to the above case of *Stephens v. Medina*, in which it has been decided by the court of Q. B., that the purchaser's liability to bear the expense of the conveyance, is the true reason of the rule which has thrown upon him the duty of preparing the conveyance, the court holding not only that it was the purchaser's duty to prepare the deed of transfer, but also that he must make a tender of it for execution before bringing any action against the purchaser for breach of the agreement.

The action was brought for breach of the agreement, in not transferring to the plaintiff certain railway shares, which he had bought of the defendant. The plaintiff omitted to aver in his declaration that he had tendered to the defendant any conveyance for execution: and the question arose, upon special demurrer, whether such tender is a condition precedent to the maintenance of the action. For the plaintiff, it was urged that the practice of throwing this duty on purchasers in reference to the conveyance of real property and terms for years, had been established, because there was or might be more or less of complexity of title, or in the mode of conveyance: and that, as the purchaser was to secure himself in respect of the title, and to prescribe all the peculiarities which he required in the conveyance, it was proper that his legal adviser should prepare the instrument: but it was insisted that the foregoing reasons did not apply in a case like the present, where the form of conveyance was simple, and prescribed in terms by the Railway Act itself.

Lord Denman, J. "It does not appear to

us that this is the true reason of the rule, which seems rather to be a consequence from the fact that the purchaser is to pay for the conveyance; the contract on the part of the vendor being simply this:—In consideration of such a sum, I will execute any proper conveyance which you may tender me. But whatever be the true ground for the rule, whether this alone, or partly for the security of the purchaser; it appears to us that we ought not to introduce a different rule in the present case, even if the same reasons do not exist in full force, unless there be some inconvenience or injustice in adhering to it. Conveyances, of property of this description and under similar circumstances, are becoming exceedingly frequent; they have now been in use for some time, and we do not find that any practice has grown up, varying from the uniform rule as to sales of land or leases. There is, therefore, a clear convenience in its being understood that one uniform rule will be maintained. Some expense must be incurred in the necessary stamps, if in no other way: and if nothing is said in the contract, this must, on general principles, fall on the purchaser: the vendor is to receive the purchase-money in full; and if so, it is reasonable that the purchaser should do what he is to pay for: if he is to prepare the instrument, it is with him, and he must tender it to the vendor for execution before he can maintain any action for his non-execution."

*Franklin v. Neate.* 14 Law Jour. New Ser. 59 Exch.

THE PURCHASER OF AN ARTICLE PAWNED  
MAY BRING TROVER AGAINST A PAWN-  
BROKER.

Trover by the purchaser of a chronometer which had been pawned with the defendant; the owner, at the time of the pawning, giving the pawnbroker a written authority to sell the chronometer, if not redeemed within a year. The owner subsequently sold the chronometer to the plaintiff, subject to the pawnbroker's rights; and, after the expiration of the year, but before the article was sold, the plaintiff tendered to the pawnbroker the amount due on the pawn, but the latter refused to deliver it up. Hence this action. The court, on consideration, held, that although the right to sell after a year was irrevocable by the pledgor or his assigns, there was no legal transfer of the entire legal property in the chattel itself; and that the pawnor retained a qualified property which gave him a right to sell, and by the sale to transfer to the purchaser his qualified property in the goods pawned, with all rights incident thereto. After the sale, the purchaser having the same interest in the chattel which the pawnbroker previously had, a right of action existed in him as soon as the pawnee wrongfully converted what by the sale had become the plaintiff's property. The court therefore directed a verdict to be entered for the plaintiff for the value of the chronometer.

<sup>1</sup> 1 Sugd. V. & P. 375.

<sup>2</sup> *Bradley v. Holdsworth*, 3 Mees. & W. 422.

*Regina v. Beere*, 2 Mood. & Rob. 472.

# JURYMAN TAKEN ILL DURING THE TRIAL.

After part of the evidence for the prosecution in this case of felony had been given, one of the jury was seized with illness and obliged to be removed from the box. Mr. Justice Cresswell thereupon required the evidence of a medical man that the juryman was unable to proceed with the trial; and on such evidence being given, his lordship ordered another juryman to be sworn in the place of the incapacitated juryman. The prisoners were then allowed their challenges; after which, each witness who had previously been examined was again called in and sworn, and the learned judge read over to him his own note of the witness's evidence, and asked him if it was correct. The trial was then continued, as if no interruption had occurred in the proceedings.<sup>1</sup>

*Wood the Elder v. Wood the Younger*, 4 Q. B. 397.

## EXECUTION.—MONEY IN SHERIFF'S HANDS.

Before the stat. 1 & 2 Vict. c. 110, money could not be taken in execution under a *f. fa.*, because nothing could be seized that could not be sold, and money was not the subject of sale. But by the 12th section of that statute it is enacted, that under a *f. fa.* the sheriff "may and shall seize and take any money or bank notes, &c. belonging to the person against whose effects such writ shall be sued out," and deliver the same to the party suing out such execution. Under this statute an attempt was made, in an action of *Roper v. Wood the Elder*, (the plaintiff in the present action,) to seize in execution, for the benefit of Roper, the surplus of monies lying in the sheriff's hands, ready to be paid over to Wood the Elder, under the execution issued by him in his action against Wood the Younger. But the Court of Queen's Bench unanimously held that the money so remaining in the sheriff's hands was not money belonging to Wood the Elder, but a mere debt due from the sheriff to Wood the Elder, and was not liable to be thus seized under the second execution at the suit of Roper. Lord Denman, C. J., in delivering the opinion of the

court, said, "The statute, we think, applies only to the case of money set apart and earmarked. . . . The sheriff would have abundantly satisfied the exigency of the first writ, had he brought into court or paid to the plaintiff any money to the amount of the sum returned. . . . The sheriff, upon the return that he has made, would be liable to an action of debt; . . . but would not in the present case be liable to an action of trover, which he would be if the property in any specific money was vested in the plaintiff. We therefore think, that as it does not appear that any specific money was taken by the sheriff under the execution, and appropriated specifically to satisfy the plaintiff, the amount returned was merely a debt from the sheriff, which he could not seize under a *f. fa.* against the plaintiff."

## CHANCERY CAUSE LISTS.

Lord Chancellor.

After Hilary Term, 1845.

### APPEALS.

S. O.	Clun Hospital	El. Powis	appeal and
	Attorney-Gen.	do.	peta.
S. O.	The Sheffield	The Sheffield & Rotherham	
	Canal Co.	Railway Co.	appeal
Day to	(Strickland	Strickland	
be	Ditto	Boynnton	do.
fixed	Ditto	Strickland	
	Brain	Knott	do.
	Saumarez	Saumarez	do.
	Millar	Craig	do.
S. O. G.	Cochrane	Cochrane	do.
	Lord	Colvin	
	Davenport	Bishop	do.
	Clifford	Turrell	do.
	Forbes	Pescoc	do.
pt.	Mq. of Hertford	Ld. Lowther	do.
hd.	Ditto	do.	do.
	Tyles	Hinton	appeal
	Miln	Walton	do.
	Vandeleur	Blgrave	do.
	Croaley	Derby Gas Co.	do.
	Parker	Bult	do.
	Ladbroke	Smith	do.
S. O.	Hitch	Leworthy	do.
	Coore	Lowndes	do.
	Drake	Drake	do.
	Dalton	Hayter	do.
	Baggett	Meux	do.
	Payne	Banner	do.
	Dobson	Lvall	do.
	Moorat	Richardson	do.
	Millbank	Collier	do. want of parties
	Deeks	Stanhope	3 appeals
	Wiltshire	Rabbitt	appeal
	Smith	El. of Easingham	do.
	Archer	Hudson	do.
	Turner	Newport	do.
	Attorney-Gen.	Masters & War-	
		dens &c. of the	appeal.
		City of Bristol.	
	Trulock	Robey	do.
	Courtney	Williams	do.
	Whitworth	Gangan	do.
	Bush	Shipman	do.

<sup>1</sup> See *Times* of Friday, the 7th instant, where a case is reported in the Central Criminal Court, involving the same necessity of swearing a fresh juryman, in consequence of the sudden indisposition of one of the twelve originally sworn. It was considered doubtful whether there was any precedent for this course. The above case of *Regina v. Beere* was not cited: had it been referred to, it would no doubt have been followed. Instead of reading over his notes to the witnesses, on being recalled, as done by Mr. Justice Cresswell, the learned Recorder ordered them to be examined *de novo*.

Vice-Chancellor of England.

After Hilary Term, 1845.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

	Emmett	Mitchell	plea
	Baker	Welton	demurrer
	Brown	Cole	do.
	Watts	El of Elington	2 demurs.
S. O.	Montague	Cater	3 causes pt. hd.
	Breeze	Hawkins	pt. hd.
	Ditto	English	2 causes
	Boesman	Casemove	} pt. hd.
	Casemove	Boesman	
	Freeman	Roberts	4 causes
	Roberts	Marchant	part heard
	Williams	Williams	
	Greenwood	Taylor	} exons. 2 sets
	Cox	Pearce	
	Preston	Melville	fur. dirs. and costs
	Pearce	Brooke	} 5 causes fur. dirs.
	Pearce	Parker	
	Butcher	Jackson	causes pt. hd.
	Pemberton	Jackson	
	Hastlewood	Partridge	
	Mapp	Elcock	2 causes
	Grand Junction Canal Co.	Dimes	at request of deft.
	Emerson	Gibbins	fur. dirs. and costs
	Dickson	Moss	
Short	Goldsbrough	Hawdon	
	Hiles (pauper)	Moore	2 causes
	Snow	Hole	2 causes
	Christ's Hoop.	Grainger	exons
	Fryer	Foster	2 causes
	Gurney	Goggs	fur. dirs. and costs
	Jackson	Brooke	
	Middleton	Elliot	
	Barnacle	Nightingale	exons
	Gray	Gray	
	Aubrey	Hoper	5 caus. fur. dirs. & costs.
	Chalcy	Monypenny	
	Hilber	Harris	
	Sinnett	Matthews	
	Wilson	Williams	
	Gardner	Marshall	exons. & fur. dirs.
	Kidd	North	} exons. 3 sets, and fur. dirs.
	Benett	Ravenhill	
	Gould	Uttermare	ditto
	Smith	Farr	4 causes
	Cloak	Rolle	4 caus. fur. dirs. & costs
	Hudson	Ball	7 causes do.
	Borroddale	March	fur. dirs. and costs
	Yonge	James	4 causes do.
	Ridgway	Gray	fur. dirs. and costs
	Nicholson	Wilson	ditto
	Palkner	Bisbett	
	Biddles	Biddles	
	Ashton	Parker	
	Tinnis	Bransley	2 causes
	Raid	Keith	
	Tomlinson	Troughton	
	Haydock	Tomlinson	
	Spence	Perren	
	Guinand	Nash	fur. dirs. and petn.
	Guinand	Johnson	} & costs
	Butlin	Allibone	
	Blackwell	Dunn	ditto
	Newton	Hastledine	exons.
	Grace	Waldron	2 causes
	Turquand	Knight	
	Yates	Yates	
	Clarke	Smith	2 causes

	Genge	Matthews	fur. dirs. & costs
	Lockwood	Abdy	
	Hastlewood	Partridge	
	Roberts	Griffith	
	Roberts	Evans	
	Beale	Warder	
	Pearce	Pearce	
	Butt	Bowley	
	Corbett	Limbriek	exons.
	Curling	Curling	2 causes
	Walker	Dorset	fur. dirs. & petn.
Short	Lee	Ivatt	
	Lane	Husband	
	Algar	Cook	
	Cheatle	Griffith	
	Crighton	Blink	fur. dirs. & costs
	Beaumont	Manby	
	Robinson	Aston	
	Hobson	Everatt	
	Ditto	Ferraby	
Short	Armies	Skillem	
	Ford	Moline	
	Duncan	Ross	
	Andrew	Andrew	2 causes
Short	Nichols	Haslam	
	Davis	Chanter	4 causes
Short	Lloyd	Burman	} causes
	Rainsford	Rainsford	
	Mitford	Reynolds	exons.
	Johnson	Ditto	
	Hayford	Handley	
	Canner	Snell	
	Cooper	Palmer	
	Salter	Ackroyd	
	Monkhouse	Piper	

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

M.Tm.	{ Dodsworth	Kinniard	at request of deft.
1845.	{ De.	Ditto	
S. O.	{ Adams	Paynter	
	{ Ditto	Lloyd	
	{ Ditto	Paynter	
S. O.	Gibson	D'Eate	exceptions
S.O.G.	Wright	Taylor	fur. dirs. and costs
	{ Ellise	Alsager	} 5 causes fur. dirs. and costs
	{ Ditto	Goodson	
	{ Lloyd	Jenkins	
	{ Stephens	Ditto	
	{ Ditto	Stephens	
	{ Stevens	Stevens	
	{ Wynn	Heveningham	} pt. hd.
	{ Ditto	Lovatt	
	Fernyhough	Grinders	3 causes fur. dirs. and petn.
	Norton	Pritchard	
	Clayton	Ed. Nugent	fur. dirs. & costs
	Cooper	Hawson	re-hearing
	Ferre	Foley	
	Manningford	Tolsman	
	Dunn	Dunn	
	Adams	Champion	
	Williams	Tartt	
	Bell	Whistley	
	Hudson	Bryant	
	Shadbolt	Woodfall	
	Bitmead	Champion	
	Cruick	Rowe	
	{ Wilding	Richards	} exons.
	{ Ditto	Eyton	
	Allen	Wedgwood	

Short	Coombe	Chapman
	Jones	Griffith
	Strickland	Strickland
	Keable	Smith
	Edington	Rackham
	Trimleston	Farrell
	May	Grave
	Richards	Caultbread
	Frankcombe	Hayward
	Hand	Hawarden

Vice-Chancellor Stigram.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

next	T. Broad (pauper)	Robinson
next	T. Barnett	Deane
To fix		
a day	Vincent	Bishop of Sodor and Man
	Masey	Moss fur. dirs. and costs
	Ferrand	Wilson
	Ditto	Turner
S. O.	Brooks	Jopling
	Morison	Morison exons. & ptn. pt. hd.
pt. hd.	Aspinall	Andus fur dirs. and costs
	Smith	Beesley fur. dirs.
	Ashbee	Ashbee } fur. dirs. and
	Ditto	Theobald } petition
	Strangeways	Corbett fur. dirs.
	Towgood	Hankey 5 causes do. & ptn.
	Brown	Brown fur. dirs. and costs
	Ditto	Baston cause
	Packham	Gregory
	Phelps	Deardin
	Davis	Davis
	Ditto	Welsh
	Cooper	Pitcher
	Morgan	Chambers
	Reekes	Capper
	Morgan	Elstob } exons. and fur.
	Ditto	Hodgson } dirs.
	Dunn	Cooke
	Barwise	Barnes fur. dirs. and costs
	Bristow	Kell
	Wesby	Shaw
	Hodgetts	Lord } fur. dirs. and
	Ditto	Becke } costs
	Millers	Millers ditto
	Roberts	Tunstall
	Oakes	Goody
	Smith	Palmer } fur. dirs. and
	Ditto	Ainslie } costs
	Pavitt	Lawrence ditto
	Wheeler	Stroud
	Packham	Howell
	Jordan	Jones
	Beacon	Beacon
	Dickin	Barker
	Murch	Hynes
	Batten	Jones
	Skipton	Rawlins
	Ditto	Dent
	Mayhew	Edmonds
	Harvey	Towell
	Ditto	Gurney
	Roberts	Adams
	Holt	Dewell
	Winter	Winter
	Palmer	Palmer

#### NEW BILLS IN PARLIAMENT.

##### JOINT-STOCK COMPANIES' CLAUSES CONSOLIDATION.

By this bill it is proposed to consolidate into one act certain provisions usually inserted in acts, with respect to the construction of companies incorporated for carrying on undertakings of a public nature.

The preamble states the object to be "as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves."

##### RAILWAY CLAUSES CONSOLIDATION.

This bill has the same object in view as the last—the consolidating into one general act the usual provisions in acts relating to railways.

##### LANDS CLAUSES CONSOLIDATION.

This bill also proposes to consolidate into a general act, the various provisions usually introduced into acts relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same.

The effect of these general bills, if passed, will be to diminish the expense of preparing the particular acts relating to those several classes of public companies.

The clauses are rather long and numerous, and we are unable to find room for them, but such of our readers as are interested in public companies, will do well to consider the bills before they proceed further.

#### PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

##### House of Lords.

##### LONDON COMMISSIONERS OF BANKRUPTCY.

ON Tuesday last, the 11th instant, the following discussion took place, on the subject of a grievance well known to many of our readers who practise in the Court of Bankruptcy:—

Lord Brougham said he had given notice of his intention to present on that evening a petition from a very respectable solicitor, making very grave and serious complaints against the Commissioners of Bankruptcy, not, he was ready to admit, charging malversation or incompetency to those functionaries, for more honourable men or more capable of performing

their duties did not exist, many of them having been appointed by his noble and learned friend on the woolsack, many others by himself. But the petition to which he referred was confined to a complaint upon one subject, upon which there could exist no shadow of doubt, seeing that the truth of what was alleged against the Commissioners of Bankruptcy was certified under their own hands in the shape of a return of their attendances in their respective courts at the Bankruptcy Court, by which it appeared that some of them sat for three days a-week; some for three and a half days; and one for two days only in the week, each of them receiving for their services the not inconsiderable sum of 2,000*l.* per annum. Now, he should not only not present this petition on that evening to their lordships, but he would abstain from presenting it altogether, provided his noble and learned friend on the woolsack could give their lordships any good reason why the gentlemen to whom it referred were not in the habit of being more constantly present in their respective courts. He hoped the Commissioners of Bankruptcy would at length be pleased to measure the length and continuity of their attendances in their courts by the proportion of business which was to be done in them, the non-performance of which duties put the suitors to extreme inconvenience, an evil which was not alone confined to the petitioner whose petition he had intended to present, but which scores of other persons had but too much reason to complain of.

The Lord Chancellor said, that he had taken upon himself to request his noble and learned friend not to present the petition to which he had referred until he (the Lord Chancellor) had had an opportunity of examining into the matter and of receiving an explanation from the learned commissioners on the subject of its complaint. The petition appeared to him to involve a grave and serious charge on the conduct of the Commissioners of Bankruptcy, and he did not think such an accusation ought to be made without affording them an opportunity of first learning its exact nature, and of meeting and repelling it, if such were in their power. He had always given his noble and learned friend the greatest credit for the alterations and improvements introduced by him with respect to the bankruptcy laws, and he must say of the individuals appointed by him to act as commissioners in that court, that no one cognizant of their learning and capacity had ever been disposed to find fault with his noble and learned friend's appointments. He hoped, therefore, that when an opportunity had been afforded to him to inquire into the matter, a satisfactory explanation of the circumstances referred to in the petition would be afforded by the commissioners.

Lord Brougham observed, that he should neither have done or said so much as he had with respect to the matter, had not the gentlemen in question given him grounds for so doing under their own hands. He had not said one word about any other charge against

them except that relating to their attendance to their duties.

The Lord Chancellor had had an opportunity of conversing on the subject with Mr. Commissioner Holroyd, who had stated to him that it was quite true his learned brother commissioners and himself did not attend every day in their open courts, nor more than three days in the week, but that the business transacted by them was not confined to their public sittings, for that the labour which devolved upon them out of court was greater than that which they transacted in court, as they had accounts to look over, reports to read, and other business consequent upon their duties to transact, which occupied a great deal more time than their public sittings. In his (the Lord Chancellor's) own case, the labour which he underwent out of court was considerably greater than that which he had to perform whilst sitting in open court.

Lord Brougham was perfectly ready to meet the proposition, that the commissioners ought not to be called upon to sit every day in open court; but more assiduous attention than had been given to this branch of their duties was requisite, as there were observable at present, day after day, in their courts numbers of petitioners who were not able to get their business transacted or heard, in consequence of the multiplicity of suitors who crowded the court.

The Lord Chancellor said, he would look to the circumstance referred to by his noble and learned friend, and endeavour to remedy the inconvenience; at the same time, he thought some exaggeration on this head had been resorted to, for out of thirteen or fourteen cases set down for hearing at one time before any of the commissioners, there might be two or three of them which would occupy much time, the remainder being simple and easily disposable cases.

Lord Brougham. In the case which had come under his own knowledge, as stated to him, five witnesses including an attorney, came from the country, and being unable to obtain a hearing on the first day, were again compelled to attend at a double expense, and the estate, which was a small one, was in consequence charged twice the sum it ought to have borne.

#### PRIVATE BILLS.

Petitions for private bills are not to be received after Tuesday, 8th of April; nor any report from the judges thereon after Thursday, 5th of June.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment,  
Appeals in Criminal Cases,  
Debtors and Creditors.

#### PROCESS AGAINST FOREIGN DEBTORS.

We are glad to find that Lord Campbell has renewed his bill for the service of common law processes abroad, and that it is now likely to pass. We strongly urged the necessity of this measure last session.



## House of Commons.

## PRIVATE BILLS.

Veneris, 7<sup>e</sup> die Februarii, 1845.

Resolved, That this house will not receive any petition for any private bill, other than a railway bill, after Friday the 28th day of this instant February.

Resolved, That no private bill, other than a railway bill, be read the first time after Friday the 4th day of April next.

Resolved, That this house will not receive the report of any private bill, other than a railway bill, after Friday the 30th day of May next.

Resolved, That this house will not receive any petition for any railway bill later than the twenty-first day after the day on which the report for the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the house.

Resolved, That no railway bill shall be read the first time later than the twenty-eighth day after the day on which the report from the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the house.

Resolved, That this house will not receive the report of any railway bill later than the eighty-fourth day after the day on which the report from the railway department of the Board of Trade, with reference to such railway, has been laid on the table of the house.

Ordered, That on every petition presented to this house, relating to any private bill before the house, the name or short title by which such bill is entered in the votes, be written at the beginning thereof.

Ordered, That the said resolutions and order be printed.

## CERTIFICATE DUTY.

Petitions for the repeal of the Certificate Duty of attorneys and solicitors have been presented from  
Wainfleet,  
Grantham,  
Burton-on-Humber,  
Winterton,  
Alford.

## NEW BILLS.

Consolidation of Railway Clauses,  
Consolidation of Public Companies' Clauses,  
Land Clauses Consolidation,  
Clerks of the Peace,  
Medical Practice,  
Roman Catholics' Relief,  
Abolishing Punishment of Death,  
Poor Law Settlement.

## CONTROVERTED ELECTIONS.

The following are the Committee for the trial of Controverted Elections for 1845:—

Lord Granville Somerset,  
Sir George Grey,  
Viscount Sandon,  
James Loeh, Esq.,  
John Wilson Patten, Esq.,  
The O'Connor Don.

## THE EDITOR'S LETTER BOX.

"A Hertfordshire Attorney" hints, that the attorneys who have causes to try on the Home Circuit are kept in a most disagreeable state of suspense. Retainers, he observes, are generally distributed some weeks beforehand; but it is impossible to decide whom to retain, until it is known what gentlemen are to receive silk gowns, and whether the future Queen's Counsel or the Serjeants are to keep. The competitors for promotion and their friends, are probably not less interested in a prompt decision. *Sic dat, qui cito dat* would be the maxim they would suggest to the Lord Chancellor.

B. was articles to an attorney in September last. He is offered an employment to attend to the accounts and take the minutes of the proceedings of a local society, for which purpose he will have to be present one night every week at the society's meetings, after office hours, and be occupied an hour each time. He will be paid a small salary, and the appointment may continue for years. His master consents to the arrangement. We think that B. may accept his engagement, and that it will not prevent his admission as an attorney.

A correspondent states, that a solicitor entered into an arrangement with his articles clerk, by which the latter was to have half the profits on all business brought by him to the office;—that the clerk brought several clients, the profits from whose business were divided accordingly; that the solicitor lent of a client's money, two sums on mortgage, to clients introduced by the clerk; and our correspondent inquires whether the clerk is entitled to half of the profits on these mortgages, as being business brought by him? We have no doubt that the whole arrangement is illegal: the attorney is liable to be struck off the roll, and the clerk to be committed to prison for 12 months.

The list of sheriffs, under-sheriffs, agents, and deputies, which has been published in an imperfect state, will be completed in a few days and given in our next number.

"Civis" on Ecclesiastical Courts shall be attended to.

The letters of J., and "an Articles Clerk," have been received.

A paper on the repeal of the certificate duty of attorneys is in the printer's hands, and will appear next week. Several petitions have already been presented, of which we shall keep a record.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, FEBRUARY 22, 1845.

—"Quod magis ad nos  
Pertinet, et necesse malum est, agiturus."

HORAT.

**THE RENEWAL OF THE INCOME  
TAX.**

WHEN the income tax was first proposed we ventured to oppose it in the form in which it was then introduced. It became law, however; but our reasons against it still remain, as it appears to us, as valid as ever, and the experience which we have had of the tax for the last three years has not either weakened its grievance or reconciled us to bear it. We may be as unsuccessful in our efforts in 1845, as we were in 1842, but we must still persevere, because we are satisfied that they are just and reasonable.

Let us take a familiar instance, then, of the injustice of the present tax as affecting equally permanent property and transitory income. Two brothers start in life; the eldest has the estate, whether in land or money matters not, but we shall assume it produces 500*l.* a-year; the second takes to the law for his profession, and gradually acquires a practice averaging the same amount. They both marry and have families. The eldest may properly, if he pleases, spend the whole of his income; if he dies to-morrow the estate remains for his family; but is the second justified in doing this? If he be a prudent, or even in our view an honest man, he will put by a portion of his income, or insure his life for a sum which will prevent his family being left, on his death—the time of which is equally uncertain as his brother's—utterly destitute. But does the distinction end here? By no means. The income from the estate is fixed, or

nearly so; the income from the practice may go to-morrow: ill health may render the lawyer incapable of attending to it; clients may die or depart without cause; circumstances may alter; the legislature may diminish the receipts by some alteration of the law. In fact, it must in its nature be a fluctuating, precarious income, which may gradually dwindle away, or vanish altogether,—and yet the payment must be made. If it be said, it may also increase, it must be remembered that with it the tax increases. But perhaps the most odious part of the distinction remains to be told. The man with his landed estate, or his fifteen thousand pounds in the funds, has to keep no secrets as to the amount of his property; this is soon pretty well known, and there is generally neither the wish nor the power to conceal it. But is this the case with professional income? Is it not perfectly notorious that this is a matter always in doubt, and never precisely known but by the one or two persons most interested? But here this odious tax steps in and rudely tears aside the veil. This is not a mere matter of feeling, it cuts much deeper: it may tend to the ruin of professional reputation; and it drives the professional man to the distressing alternative of letting the world know the nakedness of the land, or of making up a false return; the former perhaps fraught with danger, the latter leading to all the evils attendant on a first false step.

Now, surely all this is evident and undeniable: is it unreasonable then that we should endeavour, on behalf of ourselves and our professional brethren, to obtain some remission or alleviation of this tax.

We do not say repeal the income tax altogether, so far as it now presses on professional sources, but we think we may properly contend that a distinction should be made in the two cases which we put, and that if the estate is to pay three per cent., the justice of the case will be met by assessing professional income at one per cent. only. We think we need not add anything further, or enlarge on the justice and expediency of the alteration for which we contend. It may, however, be observed, that if any peculiar exemption is to be made, the attorney is fairly entitled to it, as he already pays an income tax in the shape of the certificate duty, *and this whether he has any income or not*. We do hope then, that all these matters being taken into consideration by a wise and moderate government, the relief for which we ask will be granted.

### THE RAILWAY JURISDICTION OF THE BOARD OF TRADE.

By the stat. 3 & 4 Vict. c. 97, power is given to the Board of Trade to appoint Inspectors of Railways. By stat. 7 & 8 Vict. c. 85, s. 15,\* after reciting that in order to carry the provisions of the act into execution, it is expedient that the said power be extended, it is enacted that the said power given to the lords of the said committee, of appointing proper persons to inspect railways, shall extend to authorise the appointment by the lords of the said committee of any proper person or persons for such purposes of inspection as are by the said act authorised, and also for the purpose of enabling the lords of the said committee to carry the provisions of this and of the said act, and of any general act relating to railways, into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway act, shall be repealed. Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

Under this section of the act, and with reference to the acts to which it refers, the Board of Trade appears to have as-

sumed the most important powers over all projected railways, reporting in favour of this, and against that. It is quite possible that this important power may have been properly exercised; that the requisite amount of industry and capacity may have been bestowed, and the best information on the subject obtained; still, allowing all this, it appears to us to be open to grave doubt how far it is constitutionally right to entrust this important power, involving property to an immense amount, to a department of government, acting as a secret tribunal, and issuing decrees without any check or responsibility whatever. Far be it from us to say that a Committee of the House of Commons or Lords has the means of deciding satisfactorily these grave questions, depending oftentimes on nice points of law; still we are not prepared summarily to displace these powers and to substitute for them a committee of gentlemen, however respectable, sitting in a government office, clothed with no precise or defined authority, yet wielding the most important powers. It appears to us that this department of the Board of Trade must be revised. It is true that there were certain resolutions of a select committee of the House of Commons which pointed to the establishment of this department, but it has not been usual to give such weight to recommendations of this nature.

### THE ANNUAL CERTIFICATE DUTY.

It will be observed, amongst our parliamentary notices, that several petitions have been presented from various parts of the country for the repeal of the Certificate Duty annually imposed on attorneys and solicitors.

We wish to remind those who are engaged in this measure, that on the last occasion, about three years ago, when many similar petitions were presented, a somewhat injudicious course was adopted in bringing the matter before parliament. Without any communication with the petitioners generally, or the several law societies who had promoted the application, the subject was brought on and very briefly disposed of, without the merits of the case being sufficiently considered.

Now, the parties interested should arrange with their friends in parliament,

\* See analysis of the act, *ante*, p. 42.

and get a time appointed for the discussion, and take care that all the points are properly represented. And though lawyers applying to the House of Commons for relief, may not be willingly heard, and though the Chancellor of the Exchequer may deride the application, if a fair hearing be obtained, such is the goodness of the cause, and so undeniable its justice, that a favourable impression must be produced. But for this purpose the petitioners must unite their efforts together and secure the attendance of their friends.

We hear, from persons who are acquainted with the difficulty of inducing the government to give up a productive and easily-collected tax, that there is little prospect of success with regard to the total repeal of the Duty, unless some satisfactory substitute can be suggested. We think there is no reason for despondency, if the profession would unitedly exert itself; but it may be well to consider whether any and what substitute can be suggested.

A correspondent (T. W. H.), who kindly estimates our services on this subject at a high rate, has sent us the following remarks, accompanied by a proposition which we beg our readers to consider:—

“No arguments founded in reason or justice can by any possibility be sustained; nothing but dire necessity on the part of the state can justify or excuse the infliction of this odious tax, and nothing but the exigencies occasioned by war can tolerate its continuance. The reason for its levy having, thanks be to Providence, long ceased with the cause, ought not its collection to cease? But you might as well contend against the winds of heaven, or the ocean's tides, as with the government: for as a financial measure it rests with the government to give the relief sought by the numerous petitions presented for a repeal of this noxious tax.

“In a former letter I urged the same topics, and I then told the present government that by putting a small charge on each distinct proceeding in the process of a cause, the revenue would be doubled;” and I thought the Chancellor of the Exchequer would have seized upon the idea, and wiped away the bitterness of our complaints. But, alas! we are still obliged to din into the ears of our state officials the expediency of a measure profitable to the state.

“The only plan, as it appears to me, to be likely to induce the government to loose their present hold upon our pockets, is to force upon our rulers the deep conviction that by increasing the fees payable upon issuing proceedings out

of the various courts, and not all at once upon the first process, but by a sliding or progressive scale, or any other scale they may in their wisdom please to adopt, the government would be pecuniary gainers: then indeed I have some slight hope that the desired relief may be granted, not indeed as a boon, but as a mere matter of pounds, shillings, and pence.

“Without waiting for the plea, that my scheme would operate as a tax upon the suitor, by increasing the charges for business transacted, I will take out the sting of such an argument by at once stating our willingness to pay the proposed increase of charge upon the proceedings, by fixing the charge upon the attorney himself personally, provided the charge be made in the progress of the suit, and not as at present, by a direct duty payable for the mere privilege of practising. In my former letter I showed clearly that the government would not be put to one shilling extra expense by the collection of the increased charge above proposed, inasmuch as the present law officers would be the receivers.”

On this topic of finding a substitute which the Treasury might be disposed to accept in lieu of the present impost, we may here quote from the pages of a pamphlet published in the year 1794, when it was apprehended that a very large increase would be made by Mr. Pitt on the duty payable on the admission of attorneys.

We cannot say anything in favour of the pamphleteer's project, but it is curious in itself, and may suggest some more feasible scheme. Common justice, however, requires that the tax should be repealed, without imposing any other in its stead.

The suggestion is as follows:—

“I would propose,” says the writer, “the establishment of a fund, to be peculiarly appropriated to attorneys; let those who are now in business, and others, when admitted, become each a proprietor of 500*l.* stock in this fund, which should be made absolutely necessary as a qualification to practise; let these gentlemen receive interest for their money, at 3 or perhaps 2½ per cent, nay, even less, but let their property remain inviolate; as they purchase, so let them sell, when convenience or choice may prompt them to relinquish the profession. This regulation, sir, will clear the profession of unprincipled beggary,—will prevent the stock in trade of an attorney from being employed and directed to sinister and improper purposes,—will exempt those who may become respectable and worthy members from an oppressive tax, and disgraceful fraternity,—will at the same time be as immediately and permanently productive as the measure proposed, and in a word, will yield profit to the state, restore credit to the profession, and confer a lasting benefit on the community at large.

“Should there yet remain a solitary instance of exception to these beneficial consequences,

\* We see no occasion to add to the amount of the revenue.—ED.

to show the depravity of mankind, and the imperfection of all human regulations, let this his property be the forfeit of his mal-practice, and his name be expunged at the same time, from the books of the fund, and the roll of attorneys."

## NOTES ON EQUITY.

### CROSS BILL.

Lord Chancellor Sugden has held, that if a party is desirous of being relieved, upon equitable grounds, from an executed contract, he must file a bill for the purpose. He cannot rely on those equitable grounds as a defence to a suit to have the benefit of the contract. *Richards v. Bayly*, 1 Jones & L. 120. So also in the case of *Nash v. Flynn*, 1 J. & L. 162. The same learned judge held, that to a suit instituted to obtain the benefit of an executed contract, a defence founded on the contract of the parties must be made by cross bill.

### COSTS.—LUNACY.

THE tenant of the lunatics' estate petitioned for an inquiry, whether the lunatic was bound to execute a renewal of the petitioner's lease. The Master reported that the lunatic was bound to renew, and the report was confirmed: Lord Chancellor Sugden refused to allow the petitioner his costs of the petition and the reference and the proceedings before the Master, out of the lunatic's estate. His lordship said, "When a party desirous to establish an adverse claim of this sort against a lunatic, comes here himself, he must not expect to get costs. The proper course for him to adopt is, to apply in the first instance to the committee of the estate; the committee informs the court of the fact, and the court then judges whether or not the lunatic is bound to do the act required. In this way no adverse costs are incurred; and everything necessary is done on the lunatic's part. If in any case the committee should refuse or neglect to inform the court when applied to, the other party might then, perhaps, be justified in presenting a petition on his own part, and the court would know how to deal with the costs in such a case." *Re Doolan, a Lunatic*, 3 Drury & Warren, 442.

This decision reminds us of the striking remarks which fell from Lord Cottenham, C., in disposing of *Millington v. Fox*,<sup>a</sup> where, although he pronounced a decree for the plaintiff on the merits, the noble and learned lord, nevertheless, refused to give costs, and this, on the express grounds that the plaintiff had resorted to unnecessary and useless litigation. "For what purpose was the suit prosecuted?" his lordship asked: "why simply and only for the sake of the account; which is so small that the plaintiff abandoned it at the hearing. Now, under

these circumstances, I think that a great deal of very improper expenses has been incurred. It strikes me, therefore, that this is exactly a case in which the court is repressing useless litigation, by refusing the plaintiffs the costs of the cause."

### BENEFIT OF FORMER DECREE. — WHEN REFUSED.

At law no allegation against the validity of a record of the court is allowed; but in equity, where a suit is instituted to obtain the benefit of a decree, the court will take into consideration the validity of such decree.

John Macnamara, as one of the younger children for whom a provision to the amount of 3,000*l.* was made by a marriage settlement of 1st July, 1777, became entitled to 750*l.*, one-fourth of that sum; and by a decree made in the year 1814, in a case of *Cor v. Macnamara*, a sum of 950*l.* 1*s.* 2*d.*, being the amount then due for principal and interest upon the said sum of 750*l.*, was declared to be well charged upon the lands comprised in the settlement, and was decreed to be paid, *with interest until paid*. The rights of John Macnamara under this decree, subsequently became vested in the plaintiff O'Connell, who accordingly filed a bill for carrying into execution the decree of 1814. At the hearing of the cause it was urged, that the decree was manifestly erroneous in directing interest to be computed upon the consolidated sum of principal and interest thereby declared to be due: and the Lord Chancellor Sugden being of that opinion, refused to carry the decree into specific execution. His lordship said: "I do not understand the rule to be, that this court is bound to carry into execution an erroneous decree; on the contrary, I apprehend that when a party comes into this court asking for the benefit of a former decree, he must be prepared to show, if the case requires it, that such decree was right. . . . I will not give the plaintiff the benefit of the former proceedings, unless he consents to take the proper decree." With respect to the foregoing case, the right of the court to examine the law of the decree upon a bill being filed to carry it into execution, is supported by Lord Redesdale.<sup>b</sup> At the same time his lordship states the general rule to be, that the attention of the court does not appear to have been directed in *O'Connell v. Macnamara* to the case of *Bachelor v. Blake*,<sup>c</sup> in which Lord Chancellor Manners held, that where a decree gives interest upon a consolidated sum reported due for principal and interest on a judgment debt, this is not error *on the face* of the decree; for the imputed error may be rebutted by evidence of agreement. The reporter of the case of *Bachelor v. Blake*, has likewise stated in a note several cases in which interest was given on the consolidated sum reported due on mortgages, &c., and adds, that Lord Chancellor Hart, though he appears to have disliked the adop-

<sup>a</sup> 3 Myl. & Cr. 338.

<sup>b</sup> Tr. Pl. 96, 4th edition. <sup>c</sup> 2 Molloy, 435.

tion of the rule as the ordinary course of the court, did not object on principle to a decree for compound interest, if a proper case were made, and on the contrary, said that the court frequently works manifest injustice by adhering pertinaciously to the rule of simple interest. *O'Connell v. Macnamara*, 3 Drury & W. 611.

## NEW BILLS IN PARLIAMENT.

### SERVICE OF COMMON LAW PROCESS ABROAD.

THIS bill recites that there are by law no means of recovering judgment against any person resident out of the jurisdiction of her Majesty's Superior Courts of Common Law at Westminster, except by proceeding to outlawry against such person, or except by writ of Distingas to compel an appearance: and that the said means of recovering judgment are unnecessarily tedious and expensive. To simplify and improve the same, it is proposed to be enacted as follows:—

1. That where any person against whom any right of action shall exist shall be resident out of the jurisdiction of the said courts, whether within the dominions of her Majesty, her heirs and successors, or otherwise, in case it shall be made to appear by affidavit to the satisfaction of the court out of which any writ of summons against such person is proposed to be issued, or to any judge of the said court, that the cause of action in respect of which the said writ is about to issue hath arisen within the jurisdiction of such court, and that such person was domiciled in England when such cause of action arose, and that such person is a subject of her Majesty, and has been for six calendar months at the least next before the making of such affidavit resident out of the jurisdiction of the said court, and also in what place or country such person is resident or may probably be found, then and in any such case it shall be lawful for the said court or judge (if the said court or judge shall think fit so to do) to order and allow that service of the said writ of summons may be effected upon such person at such place or within such limits as to the said court or judge shall seem fit, notwithstanding that such place or such limits may be out of the jurisdiction of the said court.

2. That the said court or judge shall, in and by any order to be made as herein-before directed, specify and direct for what period the said writ of summons shall remain and be in force, and within what period from the time of the service of the said writ upon the defendant the defendant shall be bound to appear to the said writ, and in the event of the defendant not appearing to the said writ, and of the plaintiff appearing for the defendant, in manner hereinafter mentioned, within what time from the filing by the plaintiff of the declaration in the said action, as hereinafter also mentioned, the defendant shall be bound to plead to the said action.

3. The form of writ of summons is to be the same as under 2 & 3 W. 4, c. 39, except that in lieu of the words "eight days" in the body of the said writ shall be inserted such time as to the said court or judge shall seem fit; and that in lieu of the words "four calendar months" in the memorandum subscribed to the said writ shall be inserted such time as to the said court or judge shall seem fit; and such writ be continued by alias and pluries, as the case may require: Provided further, that no such writ shall be continued by alias or pluries except by such leave as aforesaid.

4. That where any person or persons, being resident out of the jurisdiction of the said courts, shall be sued under the provisions of this act jointly with any other person or persons who shall be resident within such jurisdiction, it shall and may be lawful for the plaintiff or plaintiffs in such action to sue out against the person or persons being so resident within such jurisdiction of the said courts a writ of summons in the form now in use, which last-mentioned writ shall be tested on the same day as any writ of summons to be issued under the provisions of this act, as hereinbefore mentioned, and shall contain the name or names of such person or persons only as shall be resident within the jurisdiction of the said courts: Provided always, that in every such case there shall be subscribed to any such last-mentioned writ of summons, and also to any writ of summons issued under the provisions of this act against any defendant residing out of the jurisdiction of the said courts, a memorandum in the form contained in the schedule to this act annexed, marked No. 1: Provided also, that all subsequent proceedings against the parties so resident within the jurisdiction of the said courts shall be the same to all intents and purposes as if the person so residing out of the said jurisdiction were resident within the same: Provided also, that it shall and may be lawful for the court out of which the said writ shall issue, or for any judge thereof, upon the application of the plaintiff or plaintiffs in such action, to enlarge the time within which the plaintiff or plaintiffs shall be by law bound to declare or take any other step or proceeding in the said action against the said defendant or defendants resident within the jurisdiction of the said court, if the said court or judge shall think the same reasonable, by reason of one or more of the defendants in such action being resident out of the said jurisdiction.

5. Plaintiff, on serving writ, to serve copy of judge's order and notice of action. Service abroad to be as effectual as if made within the jurisdiction.

6. That if any defendant who shall be resident out of the said jurisdiction as aforesaid, and shall have been served with a writ of summons in manner hereinbefore mentioned, shall not, within the time specified in any such order as aforesaid, appear to the said action, it shall and may be lawful for the plaintiff or plaintiffs in such action to apply *ex parte* to the court out

of which the writ of summons in the said action shall have issued, or to any judge of such court, for an order to authorise the said plaintiff or plaintiffs to enter an appearance for such defendant to such action; and if it shall appear to the satisfaction of the said court or judge, by affidavit (such affidavit to be at the time of entering the appearance hereinafter mentioned filed with the officer of the said court, with whom affidavits of service of process are now filed under the provisions of the said recited act made and passed in the second year of the reign of his late Majesty King William the Fourth), that the provisions hereinbefore contained have been duly complied with, then it shall and may be lawful for the said court or judge, if such court or judge shall think fit so to do, to order that the plaintiff or plaintiffs in the said action be at liberty, either forthwith or at the expiration of such further time as may be named by the said court or judge, to enter an appearance to the said action for such defendant, and thereupon it shall and may be lawful for the said plaintiff or plaintiffs to enter an appearance for such defendant to the said action pursuant to such last-mentioned order, and such appearance shall be as valid and effectual to all purposes whatsoever as if the same had been entered by the defendant.

7. Form of appearance.

8. That any affidavit of service to be hereafter made in pursuance of the provisions of this act shall and may be made before any person before whom affidavits of service may now by law be made, or before any governor, lieutenant-governor, ambassador, envoy, minister, secretary of embassy or legation, consul-general, or consul appointed by her Majesty, her heirs and successors, or his or their respective deputy or deputies, who may be resident within or nearest to the county, place, or limits at or within which any such writ may be served as aforesaid; and every such governor, lieutenant-governor, ambassador, envoy, minister, secretary of embassy or legation, consul-general, or consul, or his or their respective deputy or deputies, is and are hereby authorized and required to administer the oath to any person or persons desirous of making such affidavit, and to subscribe and take such affidavit accordingly.

9. Party taking false oath to be guilty of perjury.

10. Plaintiff, after appearing for defendant, to be at liberty to file declaration and proceed to action. Proviso, that court or judge may give further time to plead.

11. Defendant to appear and plead by attorney, or if in person to state where pleadings and notices may be served upon him. If defendant appear or plead, future proceedings to be as if defendant lived in England, and more than 20 miles from London.

12. That in all cases in which a defendant who is resident out of the jurisdiction of the said courts, who has been duly served under the provisions of this act, shall not have appeared to the said action, and judgment shall

have been duly signed against such defendant by default, it shall and may be lawful for such defendant to apply to the said court in which such action shall be brought, or any judge thereof, at any time within one year from the day of signing final judgment; and if upon such application it shall be made to appear to the satisfaction of such court or judge, by affidavit, that such defendant had a good defence to the said action on the merits, then it shall and may be lawful for the said court or judge, if such court or judge shall think fit so to do, to order that, so far as regards such defendant, but not further or otherwise, the said judgment, and also any execution which may have issued thereon, shall be set aside, and any lands, goods, or property which may have been seized thereunder restored to the said defendant, and that the said defendant be at liberty to defend the said action upon such terms as to the said court or judge shall seem proper.

13. Act not to repeal 3 & 4 W. 4, c. 42, s. 8.

14. Provisions of 11 G. 4, & 1 W. 4, c. 70, s. 4, and of 1 & 2 Vict. c. 45, s. 1, to extend to this act.

15. Interpretation clause.

16. Commencement of act—first September.

## REDUCTION OF CHANCERY FEES.

WE last week printed the New Order reducing the fee for taxing costs from 4 to 3 per cent. We believe that the reduction has been judiciously made, for although it may be said, that in a great many cases the payment was made just before the solicitor would be entitled to receive it back from the fund in court, yet as between solicitor and client the amount was a great grievance, and so it was in cases where there being no fund in court, the receipt of the costs was more or less doubtful. We therefore hail the reduction.

The total amount of the reductions from 22nd March last, as appears by a return to the House of Lords, is no less than 24,674*l.* 1*s.* *per annum.*

This must be a great relief in the first instance to the solicitor, and ultimately his client. Still we hear "the note of preparation" for another motion in parliament, relating to the compensations to the clerks in court, agents, &c. A pamphlet on this subject has just been published by Hatchard & Son.

## PARLIAMENTARY RETURNS.

### ATTENDANCE OF COMMISSIONERS OF BANKRUPTS.

A Return of the number of days, and of the number of hours per day, during which the

Commissioners of her Majesty's Court of Bankruptcy sat in court, for the three months from the 5th June to 5th September last:—

*Mr. Commissioner Holroyd.*

1844: June	7th	. . .	. 5½	hours.
—	8th	. . .	. 5	—
—	11th	. . .	. 5½	—
—	12th	. . .	. 3	—
—	14th	. . .	. 5	—
—	15th	. . .	. 5	—
—	18th	. . .	. 5½	—
—	20th	. . .	. 3	—
—	21st	. . .	. 5½	—
—	25th	. . .	. 5	—
—	27th	. . .	. 5	—
—	28th	. . .	. 5	—
July	2d	. . .	. 5	—
—	4th	. . .	. 4	—
—	5th	. . .	. 4	—
—	9th	. . .	. 5	—
—	11th	. . .	. 5	—
—	12th	. . .	. 5½	—
—	16th	. . .	. 5½	—
—	17th	. . .	. 5½	—
—	18th	. . .	. 5	—
—	19th	. . .	. 5	—
—	23d	. . .	. 5	—
—	25th	. . .	. 5½	—
—	26th	. . .	. 5½	—
—	29th	. . .	. 5	—
—	30th	. . .	. 5	—
—	31st	. . .	. 3	—
August.	3d	. . .	. 3	—
5th August to 5th September . Vacation.				

*Commissioner Sir C. F. Williams.*

1844: June	5th, Wednesday	. 3	hours.
—	6th, Thursday	. 5	—
—	7th, Friday	. 6	—
—	8th, Saturday	. 6	—
—	10th, Monday	. 5	—
—	11th, Tuesday	. 5	—
—	12th, Wednesday	. 3	—
—	13th, Thursday	. 5	—
—	14th, Friday	. 4	—
—	17th, Monday	. 5	—
—	18th, Tuesday	. 4	—
—	19th, Wednesday	. 3	—
—	20th, Thursday	. 4	—
—	21st, Friday	. 5	—
—	24th, Monday	. 5	—
—	25th, Tuesday	. 5	—
—	27th, Thursday	. 4	—
—	28th, Friday	. 4	—
July	1st, Monday	. 5	—
—	2d, Tuesday	. 5	—
—	4th, Thursday	. 5	—
—	5th, Friday	. 4	—
—	6th, Saturday	. 5	—
—	8th, Monday	. 5	—
—	9th, Tuesday	. 5	—
—	11th, Thursday	. 6	—
—	12th, Friday	. 4	—
—	13th, Saturday	. 4	—

*Mr. Commissioner Goulburn.*

June	11th, Tuesday.	. 5	hours.
	14th, Friday .	. 6	—
	15th, Saturday .	. 5	—
	17th, Monday .	. 5½	—
	18th, Tuesday .	. 4½	—
	21st, Friday .	. 6½	—
	22d, Saturday .	. 5	—
	24th, Monday .	. 4	—
	25th, Tuesday .	. 5	—
	26th, Wednesday	. 5½	—
	28th, Friday .	. 3	—
	29th, Saturday .	. 5½	—
July	1st, Monday .	. 5½	—
	2d, Tuesday .	. 5	—
	3d, Wednesday	. 4	—
	4th, Thursday .	. 3	—
	5th, Friday .	. 4	—
	6th, Saturday .	. 4½	—
	8th, Monday .	. 6	—
	9th, Tuesday .	. 5	—
	10th, Wednesday	. 4	—
	12th, Friday .	. 5½	—
	13th, Saturday .	. 6	—
	15th, Monday .	. 5	—
	16th, Tuesday .	. 4½	—
	17th, Wednesday	. 5	—
	18th, Thursday	. 5	—
	19th, Friday .	. 4	—
	20th, Saturday .	. 5	—
	22d, Monday .	. 5	—
	23d, Tuesday .	. 4½	—
	24th, Wednesday	. 5	—
	25th, Thursday	. 5	—
	26th, Friday .	. 9	—
	27th, Saturday .	. 6½	—
	29th, Monday .	. 6	—
	30th, Tuesday .	. 6	—
	31st, Wednesday	. 5	—
Aug.	3d, Saturday .	. 5½	—
	5th, Monday .	. 5	—
	6th, Tuesday .	. 5½	—
	7th, Wednesday	. 5	—
	8th, Thursday	. 5½	—
	9th, Friday .	. 4½	—
	10th, Saturday	. 5½	—
	12th, Monday .	. 6	—
	13th, Tuesday .	. 5	—
	14th, Wednesday	. 6	—
	15th, Thursday	. 4	—

*Mr. Commissioner Fonblanque.*

June	4 . 5	hours.	July	6 . 4	—
	6 . 6	—		11 . 4	—
	7 . 6	—		16 . 4	—
	11 . 5	—		18 . 6	—
	13 . 5	—		19 . 5	—
	14 . 5	—		20 . 4	—
	19 . 2	—		23 . 4	—
	20 . 5	—		25 . 5	—
	21 . 5	—		26 . 5	—
	25 . 5	—		30 . 1	—
	27 . 5	—		31 . 6	—
	28 . 4	—	Aug.	1 . 5	—
July	2 . 5	—		2 . 5	—
	4 . 5	—		5 . 5	—
	5 . 5	—		6 . 5	—

On the 15th of July the late Sir Charles F. Williams commenced his vacation.



Aug. 8 . 5 —	22 . 5 —
9 . 5 —	23 . 5 —
12 . 5 —	24 . 5 —
13 . 4 —	26 . 4 —
15 . 5 —	27 . 5 —
16 . 4 —	28 . 5 —
17 . 4 —	29 . 5 —
19 . 5 —	30 . 5 —
20 . 5 —	31 . 6 —
21 . 5 —	

24th August . 11 . —
27th August . 11 . 2
29th August . 11 . 1
30th August . 11 . 2
31st August . 11 . —

## September, 1844.

2d September . 12 . 1
3d September . 11 . 2
4th September . 11 . 1½
5th September . 11 . —

## Mr. Commissioner Fane.

The commissioner very seldom leaves the court before four o'clock on those days on which he sits. During the last fifteen days of August and the first fifteen days of September the court sat every day, and continued sitting until five, six, seven, and sometimes eight o'clock, owing to the press of business arising under the Act to amend the Law of Insolvency, Bankruptcy, and Execution.

Independently of the appointed sittings, much time is occupied in attending to business for which no appointment is made.

## June, 1844.

	First Sitting, o'clock.	Last Sitting, o'clock.
5th June	. 11	. —
6th June	. 11	. 2½
7th June	. 11	. 2
11th June	. 10½	. 2½
14th June	. 11	. 2
18th June	. 11	. 1½
20th June	. 11	. 2
21st June	. 11	. 1
25th June	. 11	. 2
28th June	. 11	. 12

## July, 1844.

2d July . 11 . 1½
4th July . 11 . —
5th July . 11 . 2
9th July . 11 . 2
11th July . 11 . 1
12th July . 11 . 2
13th July . 11½ . 12½
16th July . 11 . 2
18th July . 11 . 1
19th July . 11 . 1
23d July . 11 . 2
25th July . 11 . —
26th July . 11 . 2
30th July . 10½ . 2½

## August, 1844.

1st August . 11 . 1½
2d August . 11 . 2
6th August . 11 . 1
8th August . 11 . 1½
9th August . 11 . 2
14th August . 11 . 2
15th August . 11 . 2
16th August . 11 . 1½
20th August . 11 . 2
22d August . 11 . —
33d August . 11 . 1½

By the law of 1842 a most important duty, that of taking a general view of the conduct of the bankrupt, both before and after his bankruptcy, and on the result deciding on the certificate, was cast on the commissioner, and it was left to the bankrupt to determine *when* that review should be taken; the practical effect is, that the bankrupt, in the worst cases, waits until the commissioner has forgotten the circumstances before he applies, and then the commissioner has to make himself master of all the circumstances a second time. The commissioner could not perform this duty properly without taking the proceedings home and re-examining them. The proceedings often amount to several hundred folios. The performance of this duty occupies a great deal of time out of court.

## SELECTIONS FROM CORRESPONDENCE.

## RECEIPT STAMP.

I do not think there is sufficient ground for the argument of a Subscriber (p. 246) as to its being requisite that the receipt stamp should be large enough to cover the amount of rent before the deduction of the income tax, or that the case admits of doubt.

The tenant has the authority of parliament for paying a certain portion of *his rent* to government, and he takes the receipt of their collector for the sum paid. He then shows this receipt to his landlord, and pays him the difference, and is of course only entitled to a receipt *from him* for the amount actually paid to him. The mere fact of the document showing how the amount is ascertained cannot affect the question. The wording of the Stamp Act is, "Receipt or discharge given for or upon the payment of money amounting, &c." Now the amount paid the landlord is *the rent less the tax*, and that reduced sum, therefore, regulates the amount of the stamp.

I think your correspondent must concur in this view of the case, upon referring to the acts imposing the income tax and the stamp. My practical experience, so far as it goes, bears out my opinion.

ALPHA.

**PRESUMED SURRENDER OF TERM.**

A term being created by a mortgage deed, dated 1806, and the purpose for which it was created being satisfied several years afterwards, viz., by a discharge of the incumbrance, can the term be presumed to have been surrendered by one who becomes a purchaser after a lapse of forty years, the whole of the deeds being in the possession of the representatives of the deceased owner?

There are several cases reported in Atkinson's Essay on Marketable titles very nearly assimilated to the case.

**A CONSTANT READER.**

**FEES SHARED WITH UNQUALIFIED PERSONS.**

A very eminent builder furnished a solicitor with an office on his premises, and there the latter transacted the business of all the leases the builder had to grant, the professional bills for which amounted to several hundreds per annum for some years. The builder transacted no part of the business nor received any of the bills, but the solicitor did the whole, and received and gave receipts in his own name for the money paid by the lessees. The solicitor was a duly qualified person, and between him and the builder was an arrangement for the builder to take from the solicitor all the money thus received, and allow the latter a salary about 200*l.* a year. I take it for granted the builder found the expenditure, but as no parties got their leases without paying the solicitor's bill, that amounted to nothing. The solicitor became indebted to, and I believe, behaved very ill to a client of mine, who having got an intimation of this contract, so creditable to our profession, desired me to oppose the solicitor on his application to be discharged by the Insolvent Court. I did so, and he told the whole truth to my counsel just as I have detailed it to you. My client talked of getting him struck off the rolls, and I felt more indignant at the builder's conduct, which I considered a gross insult on the profession. I was sorry for the attorney, a young man with a family, and as you, Mr. Editor, are behind the scenes, you can make allowance for distress.

However, I had to obey my client's instructions, and consulted several professional acquaintances, who all expressed great indignation at the conduct of the builder and solicitor, and said, there could be no doubt that one could be punished and the other struck off the roll, but when I requested to be referred to authorities none could be found. You will observe, that no unqualified person practised or was permitted to practise in the name of a solicitor. The builder got the solicitor his business, the solicitor did it, (being duly qualified,) and received the amount of his bills. The money thus acquired was the solicitor's own, and he might give it to the builder, to me, to you, &c. &c. He might do as he would with his own. The opinion of a very eminent

barrister was taken, and he considered the parties were out of the reach of the law. This is the sort of case alluded to by your correspondent L., who proposes to remedy it by an examination on oath of suspected parties, before the Law Society; but, though I should like to punish the builder, who, with others of his fraternity continue, *I am told*, to this day, in the practices aforesaid, I confess I do not like L.'s remedy, and wish he or some of your correspondents could devise some other means to check a practice so disgraceful to our profession. The difficulty is, that sometimes the giving up of part of a professional man's profits on a fair contract is a mere act of justice, as in the case of the widow and family of an attorney receiving an annuity, or part of the profits of a business from the surviving partners. I know some instances of this, and you cannot say to a solicitor, who has received the amount of his bill legally earned, "You shall not do as you please with your own property," and how is any line to be drawn without infringing on a principle which has for centuries been acted upon in this country?

P. R. A.

**LAW PROMOTIONS.**

**ADMIRALTY COUNSEL.**

Richard Godson, Esq., Q. C., M. P., of the Oxford Circuit, has been appointed Counsel to the Admiralty.

**NEW QUEEN'S COUNSEL.**

*Common Law Bar.*

Lebbens Charles Humfrey, Esq., M.A., of the Midland Circuit, called to the bar 17th June, 1823, by the Society of Lincoln's Inn.

Russell Gurney, Esq., (second son of Sir John Gurney, late Baron of the Exchequer,) of the Home Circuit, called to the bar 21st Nov., 1828, by the Inner Temple.

George Medd Butt, Esq., of the Western Circuit, called 25th June, 1830, by the Inner Temple.

Montagu Chambers, Esq., of the Home Circuit, called 8th February, 1828, by Lincoln's Inn.

*Equity Bar.*

William Lee, Esq., called to the bar 2d July, 1813, by the Inner Temple.

John Billingsley Parry, Esq., called to the bar 12th November, 1824, by Lincoln's Inn.

William Page Wood, Esq., M.A., (son of the late Sir Matthew Wood, Bart.,) called to the bar 23d Nov. 1827, by Lincoln's Inn.

**Queen's Bench.**

8th Victoria, 20th Feb. 1845.

THIS Court will, on Saturday the 1st day of March next, at 10 o'clock A. M., hold a Sitting, and will deliver judgment in cases that have been argued.

By THE COURT.

## LIST OF SHERIFFS, UNDER-SHERIFFS,

[THE following has been taken, with the latest corrections, from Laidman & Cox's List, and Auctioneers, as now allowed by the Masters of the Common Law Courts.]

Warrants for all places marked thus (\*) are not granted in town.—

## ENGLAND.

<i>Counties, &amp;c.</i>	<i>Sheriffs.</i>
Bedfordshire . . .	William Bartholomew Higgins, of Turvey, Esq. . . . .
Berkshire . . .	John Bligh Monck, of Coley Park, Esq. . . . .
*Berwick-upon-Tweed . . .	George Gilchrist, of Berwick-upon-Tweed, Esq. . . . .
Bristol, City of . . .	John Harding, of Clifton, Esq. . . . .
Buckinghamshire . . .	Edmund Francis Dayrell, of Lillingstone Dayrell, Esq. . . . .
Cambridge and Hunts. . .	John Bonfoy Rooper, of Abbots Ripton, Esq. . . . .
*Canterbury, City of . . .	Joseph Jackson, of St. Margaret Street, Esq. . . . .
Cheshire . . .	Sir William Thomas Stanley Massey Stanley, of Hooton Park, Bart. . . . .
*Chester, City of . . .	Edward Tilston, of Chester, Esq. . . . .
*Cinque Ports . . .	His Grace the Duke of Wellington . . . . .
Cornwall . . .	Francis Rodd, of Trebatha Hall, Esq. . . . .
Coventry, City of . . .	Act 5 & 6 Vict. c. 110, sec. 10, abolished the office of Sheriff for this city, and
Cumberland . . .	Timothy Fetherstonbaugh, of The College, Kirkoswald, Esq. . . . .
Derbyshire . . .	Thomas Pares, of Hopwell Hall, Esq. . . . .
Devonshire . . .	Edward Simcoe Drewe, of The Grange, Esq. . . . .
Dorsetshire . . .	Edward Balston, of Corfe Hill, Esq. . . . .
*Durham . . .	John William Williamson, of Whickham, Esq. . . . .
Essex . . .	George Round, of Colchester, Esq. . . . .
*Exeter, City of . . .	William Dennis Moore, of Exeter, Esq. . . . .
*Gloucestershire . . .	Edmund Hopkinson, of Edgeworth Manor, Esq. . . . .
Gloucester, City of . . .	Charles Parker, of Gloucester, Esq. . . . .
Hampshire . . .	Sir Richard Godin Simeon, of Swainstone, Isle of Wight, Bart. . . . .
Herefordshire . . .	James King King, of Staunton Park, Esq. . . . .
Hertfordshire . . .	Sir Henry Meux, of Theobald's Park, Bart. . . . .
Huntingdon and Camb. . .	John Bonfoy Rooper, of Abbots Ripton, Esq. . . . .
Kent . . .	Sir Moses Montefiore, East Cliff Lodge, St. Lawrence, Isle of Thanet, Kt. . . . .
*Kingston-upon-Hull . . .	Robert Harrison, of Kingston-upon-Hull Esq. . . . .
*Lancashire . . .	Fudsey Dawson, of Hornby Castle, Hornby, Esq. . . . .
Leicestershire . . .	William Corbet Smith, of Bitteswell Hall, Esq. . . . .
Lincolnshire . . .	Thomas Coltman, of Hagnaby Priory, Esq. . . . .
*Lincoln, City of . . .	John Summerscales, of Lincoln, Esq. . . . .
Litchfield, City of . . .	John Thaynis Blood, of Lichfield, Esq. . . . .
London, City of . . .	William Hunter, of 10, Finsbury Circus, Esq. . . . .
Middlesex . . .	Robert Sidney, of Leyton House, Leyton, Essex, Esq. . . . .
Monmouthshire . . .	William Phillips, of Whitsun House, Esq. . . . .
Newcastle-upon-Tyne . . .	John Featherstone Ayton, of Newcastle-upon-Tyne, Esq. . . . .
Norfolk . . .	Theophilus Russell Buckworth, of Cockley Cley, Esq. . . . .
*Norwich, City of . . .	John Betts, of Norwich, Esq. . . . .
Northamptonshire . . .	The Honourable Richard Watson, of Rockingham Castle . . . . .
Northumberland . . .	Ralph Carr, of Hedgley, Esq. . . . .

## DEPUTIES, AND AGENTS FOR 1845.

they have appended to their publication a very useful *Table of the Fees of Sheriffs, Bailiffs, and*

*Office Hours*, in Term, from 11 to 4; and in Vacation, from 11 to 5.

## ENGLAND.

*Under-Sheriffs.**Deputies and Town Agents.*

Messrs. Sharman and Turnley, of Bedford	Messrs. Meggison, Pringle & Co., 3, King's Road, Bedford Row.
Edward Vines, of Reading, Esq.	Messrs. Abbott, Jenkins and Abbott, 8, New Inn.
Robert Home, of Berwick-upon-Tweed, Esq.	Joseph Warner Bromley, 1, South Sq., Gray's Inn.
William Ody Hare, of Bristol, Esq.	Messrs. Bridges and Mason, 23, Red Lion Square.
Acton Tindal, of Aylesbury, Esq.	Owen Tickel Alger, 57, Bedford Row.
George Game Day, of St. Ives, Esq.	Messrs. Milne, Parry, Milne & Morris, 2, Harcourt Buildings, Temple.
Robert George Chipperfield, of Canterbury, Esq.	Thomas Kirk, 10, Symond's Inn, Chancery Lane.
William Eaton Mousley, of Derby, Esq. (A. U. John Hostage, of Chester, Esq.)	Messrs. Gregory, Faulkner & Co., 1, Bedford Row.
John Finchett Maddock, of Chester, Esq.	John Philpot, jun., 3, Southampton St., Bloomsbury.
Thomas Pain, of Dover, Esq.	Messrs. Waterman, Wright, Kingsford, 23, Essex Street, Strand.
Thomas Whitford, of St. Columb, Esq.	Messrs. Paynter and Ollard, 13, South Square, Gray's Inn.
Warrants are now granted by the Sheriff of WARWICKSHIRE.	
Silas Saul, of Carlisle, Esq.	George Carew, 9, Lincoln's-Inn-Fields.
John Barber, of Derby, Esq.	Messrs. Gregory, Faulkner and Co., 1, Bedford Row.
Mark Kennaway, of Exeter, Esq.	Messrs. Finch & Nease, 57, Lincoln's-Inn-Fields.
William Mansfield, of Dorchester, Esq.	Messrs. Rhodes and Lane, 63, Chancery Lane.
Thomas Griffith, of Durham, Esq.	James Griffith, 6, Raymond Build., Gray's Inn.
John Ringle Thomson, Esq. (A. U. Thomas Morgan Gepp, of Chelmsford, Esq.)	Thomas Wright Nelson, 62, Cheapside.
Edwin Force, of Exeter, Esq.	William Harris, 5, Stone Buildings, Lincoln's Inn.
John Burrop, of the City of Gloucester, Esq.	Messrs. Jones, Trinder & Tudway, 1, John Street, Bedford Row.
John Lovegrove, of Gloucester, Esq.	Messrs. Nicholls and Doyle, 48, Bedford Row.
Charles Seagrim, of Winchester, Esq.	Messrs. Hicks and Braikenridge, 16, Bartlett's Buildings, Holborn.
Richard Underwood, of Castle Street, Hereford, Esq.	George Pleydell Wilton, 1, Raymond's Buildings.
Messrs. Longmore and Swarder, of Hertford	Messrs. Hawkins, Bloxham, Stocker and Bloxham, 2, New Boswell Court.
George Game Day, of St. Ives, Esq.	Messrs. Mylne, Parry, Mylne and Morris, 2, Harcourt Buildings, Temple.
David Williams Wire, 9, St. Swithin's Lane, London, Esq.	Messrs. Palmer, France & Palmer, 24, Bedf. Row.
John Earnshaw, of Kingston-upon-Hull, Esq.	Zachary Brooke, 17, Featherstone Builds., Holborn.
John Higgin, Jun. of Lancaster, Esq. (A. U. John Stanfield, of Preston, Esq.)	Messrs. Bell, Brodrick & Rell, 9, Bow Church Yd.
Robert William Fox, of Lutterworth, Esq. (A. U. William Gregory, of Leicester, Esq.)	Messrs. Campbell and Witty, 21, Essex St. Strand.
John Walker, of Spilsby, Esq. (A. U. Henry Williams, of Lincoln, Esq.)	Messrs. Taylor and Collisson, 28, Great James St., Bedford Row.
Richard Mason, of Lincoln, Esq.	Messrs. Taylor and Collisson, 28, Great James St., Bedford Row.
Francis Egginton, of Lichfield, Esq.	Messrs. Lawrence, 25, Old Fish St., Doctors' Coms. {
William Henry Ashurst, Esq., 137, Cheapside	Secundaries' Office, 5, Basinghall Street.
George Marten, Esq., Commercial Chambers, Mincing Lane	Messrs. Burchell, 24, Red Lion Square.
Charles Prothero, of Newport, Esq.	George Hall, 11, New Boswell Ct., Lincoln's Inn.
William Harle, of Newcastle-upon-Tyne, Esq.	Messrs. Raimondi and Gooday, 14, South Square, Gray's Inn.
Charles Bonner, of Spalding, Esq. (A. U. Messrs. Adam Taylor and Sons, Norwich)	Messrs. Temple and Bonner, 16, Furnival's Inn.
John Oddia Taylor, of Norwich, Esq.	Messrs. White & Bowett, 35, Lincoln's-Inn-Fields.
Henry Lamb, of Kettering, Esq.	Messrs. Grimaldi, Stables & Barn, 1, Copthall Court, City.
Peregrine George Ellison, of Newcastle-upon-Tyne, Esq.	Messrs. Meggison, Pringle & Co., 3, King's Road Bedford Row.

Nottinghamshire . . .	William Hodgson, Barrow, of Southwell, Esq.	.	.	.	.	.	.	.	.
Nottingham, Town of . .	William Knight, of Nottingham, Esq.	.	.	.	.	.	.	.	.
Oxfordshire . . .	John Sydney North, of Wroxton Abbey, Esq.	.	.	.	.	.	.	.	.
*Poole, Town of . . .	William Pearce, of Poole, Esq.	.	.	.	.	.	.	.	.
Rutlandshire . . .	Henry Bennet Pierrepont, of Ryhall, Esq.	.	.	.	.	.	.	.	.
Shropshire . . .	St. John Chiverton Charlerton, of Apley Castle, Esq.	.	.	.	.	.	.	.	.
Somersetshire . . .	John Lee Lee, of Dillington House, Esq.	.	.	.	.	.	.	.	.
*Southampton, Town of .	Joseph Ball, of Southampton, Esq.	.	.	.	.	.	.	.	.
Staffordshire . . .	Charles Smith Forster, of Hamstead Hall, Esq.	.	.	.	.	.	.	.	.
Suffolk . . .	Henry Wilson, of Stowlangtoft, Esq.	.	.	.	.	.	.	.	.
Surrey . . .	Richard Fuller, of The Rookery, Dorking, Esq.	.	.	.	.	.	.	.	.
Sussex . . .	James Basil Daubuz, of Offington, Esq.	.	.	.	.	.	.	.	.
Warwickshire . . .	James Roberta West, of Alscot, Esq.	.	.	.	.	.	.	.	.
Westmoreland . . .	The Right Hon. the Earl of Thanet	.	.	.	.	.	.	.	.
Wiltshire . . .	Wade Browne, of Monkton Farleigh, Esq.	.	.	.	.	.	.	.	.
Worcestershire . . .	Thomas Simcox Lea, of Astley Hall, Esq.	.	.	.	.	.	.	.	.
Worcester, City of . .	Edward Lloyd, of Barbowme, Esq.	.	.	.	.	.	.	.	.
Yorkshire . . .	Sir William Bryan Cooke, of Wheatley, Bart.	.	.	.	.	.	.	.	.
*York, City of . . .	Henry Bellerby, of York, Esq.	.	.	.	.	.	.	.	.

## NORTH WALES.

*Anglesea . . .	Robert John Hughes, of Plas Llangoed, Esq.	.	.	.	.	.	.	.	.
*Carnarvonshire . . .	Postponed at present.	.	.	.	.	.	.	.	.
*Denbighshire . . .	Charles Wynne, of Garthmeilio, near Cerrigydrindion, Esq.	.	.	.	.	.	.	.	.
*Flintshire . . .	Ralph Richardson, of Greenfield Hall, near Holywell, Esq.	.	.	.	.	.	.	.	.
*Merionethshire . . .	Richard Watkin Price, of Rhiwlas, Esq.	.	.	.	.	.	.	.	.
*Montgomeryshire . .	John Winder Lyon Winder, of Vaynor Park, Esq.	.	.	.	.	.	.	.	.

## SOUTH WALES.

*Breconshire . . .	William Williams, of Aberpergwm, Esq.	.	.	.	.	.	.	.	.
*Cardiganshire . . .	John Lloyd Davies, of Alltyrodin, Esq.	.	.	.	.	.	.	.	.
Carmarthen, Borough of	John Lewis Brigstocke, of Carmarthen, Esq.	.	.	.	.	.	.	.	.
Carmarthenshire . . .	David Jones, of Glanbrane Park, Llandovery, Esq.	.	.	.	.	.	.	.	.
*Glamorganshire . . .	Robert Savours, of Trecastle, Esq.	.	.	.	.	.	.	.	.
*Haverfordwest, Town of	Mr. John Llewellyn, of Hill Street	.	.	.	.	.	.	.	.
*Pembrokeshire . . .	Abel Lewis Gower, of Castlemalgwynne, Esq.	.	.	.	.	.	.	.	.
Radnorshire . . .	James Davies, of Colver, Radnorshire, and of Moorcourt, near Kington, Herefordshire, Esq.	.	.	.	.	.	.	.	.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

## LUNACY.—PRACTICE.

*Upon the issuing of a commission of lunacy, a party who, by reason of the alleged lunatic's contracts, has such an interest as entitles him to traverse the inquisition, will not be allowed to attend the execution of the commission by counsel, unless he submits to be bound by the finding of the jury.*

THERE were two petitions in this matter;

one presented by Mrs. Watts, the wife of the alleged lunatic, on the 4th of November last, praying that a commission might be issued to inquire into his state of mind; the other, presented on the 22nd of the same month, by Miss Eliza Snook, praying that such commission might not be issued, or, if issued, that she might be allowed to attend the execution thereof by counsel, to cross-examine the witnesses in support of it, and to examine witnesses of her own against it.

The former petition stated (among other things) that the said George Watts is and has been for upwards of twenty years so deprived of reason as to be unable to govern himself or manage his affairs; that in 1821 he chopped off the fore-finger of his left hand, and being asked why he did so, he answered, "The Scripture saith, 'If thy right hand offend thee,

Richard Bridgman, Barrow, of Southwell, Esq.	Messrs. Capes and Stuart, 1, Field Ct., Gray's Inn.
(A. U. John Brewster, of Nottingham, Esq.)	Messrs. Holme, Loftus and Young, 10, New Inn.
Christopher Swann, of Nottingham, Esq.	Charles Berkeley, 52, Lincoln's-Inn-Fields.
Samuel Cooper, of Henley-upon-Thames, Esq.	Messrs. Cavelfe, Skilbeck and Hall, 19, Southampton Buildings.
Henry Mooring Aldridge, of Poole, Esq.	Messrs. Taylor and Colliason, 28, Great James St., Bedford Row.
William Hopkinson, of Stamford, Esq.	Edward Smith Bigg, 38, Southampton Buildings.
William Nock, of Wellington, Esq. (A. U. Joshua John Peele, of Shrewsbury, Esq.)	Messrs. W. & E. Dyne, 61, Lincoln's-Inn-Fields.
Edward Coles, of Taunton, Esq.	Messrs. Davies & Son, 21, Warwick St., Regent St.
Richard Blanchard, of Southampton, Esq.	Messrs. White, Eyre & White, 11, Bedford Row.
Messrs. Keen and Hand, of Stafford	Messrs. Walter and Pemberton, 4, Symond's Inn.
Harry Wayman, of Bury St. Edmunds, Esq.	Messrs. Abbott, Jenkins and Abbott, 8, New Inn.
Mark Smallpiece, of Dorking, Esq.	Messrs. Palmer, France & Palmer, 24, Bedford Row.
Thomas France, 24, Bedford Row, London, Esq.	Messrs. Ensor and Pittendreigh, 14, South Square, Gray's Inn.
Thomas Heath, of Warwick, Esq.	George Mounsey Gray, 9, Staple Inn.
John Heelis, of Appleby, Esq.	Messrs. Smith & Atkins, 12, Serjeant's Inn, Fleet St.
William Stone, of Bradford, Esq. (A. U., M. T. Hodding, of Salisbury, Esq.)	Messrs. Cardales and Iliffe, 2, Bedford Row.
Henry Saunders, of Kidderminster, Esq. (A. U. Messrs. Gillam and Son, of Worcester)	George Hall, 11, New Boswell Court.
Robert Tomkins Rea, of Worcester, Esq.	Charles Lever, 10, King's Road, Bedford Row.
Robert Henry Anderson, of the City of York, Esq.	None ever appointed.
Henry Richardson, of York, Esq.	

NORTH WALES.

Messrs. Williams and Breeze, of Portmadock (A. U. Robert Pritchard, of Lliwydiarth, Esqob, Esq.)	Robert Wynne Williams, 3, Paper Buildings, Temple.
Edward Robert Butler, Esq. (A. U. James Vaughan Horne, of Denbigh, Esq.)	Edward Robert Butler, 7, Furnival's Inn.
Messrs. Roberts and Son, of Mold	Messrs. Milne, Parry, Milne and Morris, 2, Harcourt Buildings, Temple.
Messrs. Williams and Breeze, of Portmadock	Robert Wynne Williams, 3, Paper Buildings, Temple.
Charles Thomas Woosman, of Newton, Esq.	Harvey Bowen Jones, 22, Austen Friars.

SOUTH WALES.

Thomas Morgan, (firm, Evans and Morgan,) of Cardigan, Esq.	Messrs. Jones, Trinder and Tudway, 1, John St., Bedford Row.
George Thomas, Jun., Llanmas St., Carmarthen-shire, Esq.	Messrs. Rickards and Walker, 29, Lincoln's-Inn-Fields.
David Thomas, of Brecon, Esq. (A. U. Charles Bishop, of Llandovery, Esq.)	Henry Hammond, 16, Furnival's Inn.
William Lewis, of Bridgend, Esq.	Isaac Wrentmore, 19, Lincoln's-Inn-Fields.
to whom all Writs must be sent	No Under-Sheriff or Agent ever appointed.
William Amlot, of Cardigan, Esq.	Richard Nation, 4, Orchard St., Portman Square.
Richard Banks, of Kington, Herefordshire, Esq.	Henry Hammond, 16, Furnival's Inn.

cut it off; and why not the left?" that in 1833 he plucked out his left eye, and being asked why he did so, he answered, "The Scripture saith, 'If thy right eye offend thee, pluck it out;' and why not the left?"

The petition by Miss Snook, admitting the alleged lunatic to have been sometimes of feeble understanding, arising from epileptic fits and other temporary causes, denied that he was insane, and alleged that the object of the wife in seeking a declaration of his insanity was for the purpose of defeating certain mortgages granted by him in 1834, and 1835, and 1836, to the petitioner's brother, William Snook, on whose death without issue, in 1843, petitioner, his sole next of kin, became also his legal personal representative, now entitled to the said mortgages.

Both petitions were heard by the Lord Chan-

cellor on the 19th and 20th of December last, when his lordship, in regard of the conflicting affidavits, decided on deputing Dr. Southey to visit the supposed lunatic, and to report on his state of mind.

The matter came now to be further heard, upon Dr. Southey's report and further affidavits; Mr. Wakefield and Mr. Wright being for Mrs. Watts, and Mr. Anderson and Mr. Bird for Miss Snook.

The Lord Chancellor said he had made up his mind to issue the commission. The affidavits filed on both sides, as well as Dr. Southey's report, showed that the gentleman was a fit subject for a commission.

Mr. Anderson and Mr. Bird then asked that Miss Snook might be allowed to attend the execution of the commission according to the alternative prayer of her petition. That per-

mission might save the trouble and costs to all parties of a traverse of the inquisition, to which Miss Snook was entitled as having an interest in the contracts made by the alleged lunatic with William Snook; *Ex parte Hall*.<sup>a</sup> For twenty years, during which Mrs. Watts alleged that her husband had been insane, he had been allowed by her and the family to contract debts by mortgaging his estates, the wife joining in these contracts, and applying the proceeds to the support of the family. It was most material to the interests of Miss Snook, who holds mortgages on the property to the amount of 8,000*l.* and more, to be allowed to attend the execution of the commission, and prevent the insanity to be established so as to override her securities. For that permission she was willing to submit to any terms his lordship should, at the termination of the inquiry, think proper to impose on her in respect to costs.

The Lord Chancellor observed that, independently of the costs of the opposing party, the costs of the execution of the commission would be greatly increased to the party prosecuting it, by reason of the opposition. Miss Snook had a right to traverse the finding of the jury. As she was not willing to be bound by the result of the inquiry, but would have the liberty to traverse reserved to her, the present application could not be granted. There was no case in which a party refusing to be bound by the result was allowed to attend the execution of a commission in the way this petitioner claimed. His lordship would not be the first to establish such a rule as to allow a party to put the lunatic's estate to costs, and the next day come to the court for leave to traverse the inquisition, which could not be refused.

The petition of Miss Snook was dismissed with costs.

In the matter of *Watts*, an alleged lunatic, Dec. 1844, and Jan. 20th, 1845.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### ACTION OF TRESPASS.—DAMAGES.

*In an action of trespass for issuing execution on a judgment founded on a warrant of attorney, which had afterwards been set aside as invalid, the plaintiff is not entitled, in the calculation of his damages, to recover the costs incurred by him in an application to the court to set aside the warrant of attorney.*

THIS was an action of trespass. The declaration alleged that a judgment had been entered against the plaintiff on a warrant of attorney, that execution issued, and that his goods were

seized under the execution. It then went on to allege, that by reason of the conduct of the defendants the plaintiff was greatly injured, and was put to great costs and charges in preventing the sale of his goods, and in setting aside the judgment which had been entered up on the warrant of attorney. A verdict was found for the plaintiff with damages, with leave for the defendant to move to reduce those damages, if the court should be of opinion that the plaintiff was not entitled, in estimating his damages, to take into consideration the costs he had been put to in procuring the judgment on the warrant of attorney to be set aside. Whether in fact those costs could be recovered in the present action.

Mr. Lush showed cause.

The plaintiff is placed in this situation, he has an execution in his house, and has no means of preventing the sale of his property, unless he applies to this court to set aside the judgment and warrant of attorney. There is no other mode of obtaining relief. The judgment of the court authorises the sheriff to proceed, and unless costs are incurred to show that such judgment is invalid, the plaintiff is deprived of all redress. In *Sandback v. Thomas*,<sup>a</sup> it was held, that in an action for maliciously holding the plaintiff to bail, he was entitled in the calculation of damages to recover, not merely the taxed costs, but the costs as between attorney and client. Lord Ellenborough says, "If by your act you subject a party to a legal liability to pay a sum to another, you must indemnify him against such expenses." The warrant of attorney was held to be invalid, and damages necessarily consequent on the wrongful act of the defendants have accrued to the plaintiff.

Mr. Jervis contra.

These costs cannot be recovered in the present action. When the application is made to set aside the judgment on the warrant of attorney, the court has power to award these costs, and that is the proper time to apply. This is the ordinary course of practice. The court, or judge before whom the application is made, imposes those terms which the circumstances of the case merit. The case that has been cited does not apply. The plaintiff in the present action can only recover the damages which result from the act of trespass which has been committed. (Stopped by the court.)

Lord Denman, C. J. The case of *Sandback v. Thomas*,<sup>b</sup> does not apply. The plaintiff may recover these costs in another action, but he cannot say that these damages were incurred by reason of the act of trespass committed by the defendants.

Patteson, Coleridge, and Wightman, Js., concurred.

Rule refused without costs.

*Holloway v. Turner and another.* Q. B., Sittings in banco after Hilary Term.

<sup>a</sup> 7 Ves. 261.

<sup>a</sup> 1 Starkie, 306.

<sup>b</sup> Ibid.

## Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

## REFERENCE TO ARBITRATION.—RULE FOR PAYMENT OF MONEY UNDER AWARD.

*Where a judge's order referred to the award of an arbitrator a cause and all matters in difference between the parties to the action, and also between the defendant and a third person, who by his own consent had become a party to the order of reference, and the arbitrator, instead of finding specifically on the matter in difference between such third person and the defendant, awards damages to be paid to him and the plaintiff by the defendant, as though he had been a party to the suit, the court discharged a rule calling upon the defendant to pay the amount of the award and allocatur.*

An action of trespass having been referred under a judge's order, to which order one William Cole, with his own consent, became a party, by which it was ordered that a verdict should be entered for the plaintiff, subject to the award of an arbitrator; and it was referred to the award, order, &c. to settle all matters and differences between the parties to the action, and between the defendant and William Cole, and to order and determine what he should think fit to be done by either party respecting the matters in dispute, &c.; and the arbitrator having awarded that all further proceedings in the cause should cease, and that the plaintiff had good cause of action against the defendant in the cause, and was entitled to a verdict, and assessed and awarded the damages to be paid to the plaintiff and William Cole, who consented to become a party in the cause, at the sum of 40s.; *Best* obtained a rule<sup>a</sup> calling upon the defendant to show cause why he should not pay the amount of the award and the Master's allocatur thereon.

*Gray* now showed cause, on several grounds. The second ground upon which the judgment of the court proceeded was, that the arbitrator was not authorised, because Cole had become a party to the rule to treat him as a party to the suit of *Hawkins v. Benton*, and that there ought to have been a distinct and substantive finding on the matter in difference between him and the defendant.

*Best*, in support of the rule and in answer to the second objection, contended that the order of reference obviously treated Cole as a party to the suit, and cited *Watson* on Awards, p. 3, where it is said that strangers to a suit which is referred, who are interested, may with their consent be made parties to the rule or order, and such parties as to all matters contained in the submission will be bound by the award in the same manner as parties to the action.

*Cur. adv. vult.*

*Williams, J.*, on the 30th January, delivered judgment. After having stated the facts, his lordship proceeded:—The award is shortly to this effect: the arbitrator awards that the plaintiff had a good cause of action, and awards damages to be paid by the defendant to *Hawkins* and *Cole*, who became a party in the suit, of 40s. It appears, therefore, that the award was not substantively made between the plaintiff and defendant in the cause, and also in the matters in difference between *Cole* and the defendant; but the award treats the case just as though the cause were a cause of *Hawkins* and another, namely, *Cole v. Benton*, whereas it appears to me to be subject to extreme doubt whether it is competent to the arbitrator to introduce into the original action a new party, or whether there ought not to be a substantive, and independent finding as to any ground of complaint which *Cole* might have against the defendant. This being very much in the nature of a motion for an attachment, and requiring equal strictness, as very similar consequences hang upon it, I do not think I can consent to make this rule absolute, the more especially as there is another remedy open to the plaintiff, namely, that of enforcing the award by action, in which its validity might formally be brought into question and decided. This rule must therefore be discharged.

Rule discharged, without costs.

*Hawkins v. Benton.* Q. B. P. C. H. T., 1845.

## Exchequer.

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

## JOINT CONTRACT.—PLEA IN BAR.

*A judgment recovered against one of two joint contractors, is of itself, without execution, a good defence to an action against the other, and such defence is properly pleadable in bar, and not in abatement, and the plea should conclude with the ordinary verification.*

Debt for goods sold and delivered.—Plea that the goods were sold to the defendant jointly with one Smith, and were to be paid for by the defendant jointly with Smith; that afterwards the plaintiff impleaded Smith for the identical causes of action, and recovered judgment against him, (concluding with the ordinary verification.) Special demurrer and joinder.

*Henderson*, in support of the demurrer. There is no precedent or authority for such a plea. It is true that in actions of tort, a judgment recovered against one of several tortfeasors, may be pleaded in bar to any subsequent actions against the others, but it is different with respect to actions of contract. The distinction is recognised in *Browne v. Woolton*, Cro. Jac. 73. [*Parke, B.* From the report of that case in *Ye/verton*, p. 67, it is

<sup>a</sup> As to the service of this rule, see the case of *Hawkins v. Benton*, 29 L. O., p. 283, *supra*.



evident that the language used by the court had reference to a joint and several bond.] The point is entirely new, and the dicta to be found in the books are somewhat at variance. In *Bell v. Banks*, 3 Man. & Gran. 258, *Maule*, J. says, "It may be that taking security of a higher nature from one of two joint debtors would cause a merger." In *Watters v. Smith*, 2 B. & Adol. 892, Lord *Tenterden* intimates an opinion, that a judgment recovered against one joint debtor will be no bar to an action against the other. The opinion of *Bayley*, J. in *Leachmere v. Fletcher*, 1 Cr. & M. 634, is to the contrary effect. In *Comyn's Digest*, Action, (L. 4), it is said, "If two be bound in a bond, a recovery and execution against one is no bar in an action upon the same bond against the other obligor." Here there is a joint debt which may be recovered against both, unless each pleads the nonjoinder of the other in abatement, *Rice v. Shute*, 5 Burr. 261; *Ex parte Bryant*, 2 Rose 1; *Bryant Withers*, 2 Maule & Sel. 123. The case of *Sheeby v. Manderville*, decided in the supreme court of the United States in America, and reported in 6 Crank. 253, shows that this plea is bad. There are also objections to the form of the plea, namely, that it is uncertain whether the contract was not several as well as joint: that the subject matter should have been pleaded in abatement and not in bar; that the plea amounts to the general issue, and should have concluded with a verification by the record.

*Bramwell*, contra. The plea affords a good defence. None of the cases cited bear upon the point. In *Comyn's Digest*, Action, R. 4, it is laid down that "a recovery against one obligor and execution will be a bar in debt against the other." *Dennis v. Paine*, Cro. Car. 551, is also an authority to the same effect. By the action against the one, the matter has passed *in rem judicatam*. The principle is, that where a party enters into a joint contract he is prejudiced by being sued alone. *Seaton v. Henson*, 2 Lev. 220; *Nedham's case*, 8 Co. 13 b. As to the formal objections, it sufficiently appears that the contract was joint only, and not joint and several; it would be improper to conclude the plea with a verification by the record, as it contains matters of fact which if traversed, must be tried by a jury. It cannot be a plea in abatement, as it does not profess to give a better writ.

*Cur. ad vult.*

*Parke*, B., (on the 10th of December,) said, there was a case of *King v. Hoare*, in which the plea to an action of debt, stated, that the contract in the declaration was made by the plaintiff with the defendant and one T. N. Smith, jointly, and not with the defendant alone; and that, in 1843, the plaintiff recovered a judgment against Smith for the same debt with costs, as appears by the record, which judgment still remains in full force and unreversed, concluding with the common verification. The case was argued a few days ago before my brothers Gurney, Rolfe, and myself. To this plea there is a demurrer, assigning

several special causes; first, that it was a plea in abatement not properly pleaded, to which the answer is, that the plea did not give a better writ, and that it is clearly a plea in bar. Secondly, that it amounts to the general issue; it does not, however, amount to the general issue, for it admits a debt originally due. Thirdly, that it does not aver that the debt was not due from the defendant and Smith severally, as well as jointly: to which it was properly answered, that the plea sufficiently shows the identical contract declared upon to be joint; and that it cannot be contended, *prima facie*, at least, that the same contract was both joint and several; and lastly, it objected, that the plea ought to have concluded with a verification by the record. The court, however, intimated its opinion that such an averment, although proper when the plea contains matter of record only, was not proper when the averment of matter of record was mixed with averments of matter of fact, on which an issue of fact might be taken. In the case of a plea of judgment recovered for the same cause of action, the matter of record is the only thing which can be directly put in issue on the plea; if the judgment were recovered for another cause, there must be a new assignment. The matter of form being disposed of, the question is reduced to one of substance—whether a judgment recovered against one of two joint contractors is a bar in an action against another. It is remarkable that this question should never have been actually decided in the courts of this country. There has been apparently conflicting dicta upon it. Lord *Tenterden*, in the case of *Watters v. Smith*, is reported to have said, that a mere judgment against one would not be a defence for another. My brother *Maule* stated, in *Bell v. Banks*, that a security by one of two joint debtors, might merge the remedy against both. In the case of *Leachmere v. Fletcher*, *Bayley*, B. strongly intimated the opinion of the Court of Exchequer to be, that the judgment against one was a bar for both of two joint debtors, although the point was not actually ruled, as the case did not require it. In the absence of any positive authority upon the precise question, we must decide it upon principle and by analogy to other authorities; and we feel no difficulty in coming to the conclusion that the plea is good. If there be a breach of contract, or wrong done, or any other cause of action by one against the other, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit obtained so far as it can at that stage; and it would be useless and vexatious to subject the defendant to another suit, for the purpose of obtaining the same result. Hence the legal maxim, *transit in rem judicatam*, the cause of action is changed into matter of record,—which is of a higher nature, and the inferior remedy is merged in the higher. And this appears to be equally true when there is but one cause of action, whether it be against a single

person or many. The judgment of the Court of Record changes the nature of that cause of action, and prevents it being the subject of another suit, and the cause of action being single cannot afterwards be divided into two. Thus it has been held, that if two commit a joint tort, the judgment against one is of itself, without execution, a sufficient bar to an action against the other for the same cause, *Brown v. Wootton*; and though in the report of Yelverton, expressions are used which at first sight appears to take a distinction between actions for unliquidated damages and debts, yet upon a comparison of all the reports, it seems clear that the true ground of the decision was not the circumstance of the damages being unliquidated. Chief Justice Popham states the true ground; he says, "if one hath judgment to recover in trespass against one, and damages certain," (that is converted into severalty by the judgment,) "although he be not satisfied he shall not have a new action for this trespass: by the same reason, *e contrà*, if one hath cause of action against two, and obtains judgment against the one, he shall not have remedy against the other;" and "the difference betwixt this case and the case of debt and obligation against two, is, because that every of them is chargeable and liable to the entire debt; and therefore, recovery against the one is no bar against the other, until satisfaction." And it is quite clear that the Chief Justice was referring to the case of a joint and several obligation, both from the argument of the counsel, as reported in Croke James, and the statement of the case in Yelverton. We do not think that the case of a joint contract can in this respect be distinguished from a joint tort. There is but one cause of action in each case; the party injured may sue all the joint tortfeasors or contractors, or he may sue one, subject to the right of pleading in abatement in the one case, and not in the other; but for the purpose of this decision they stand on the same footing. Whether the action is brought against one or two, it is for the same cause of action. The distinction between the case of a joint contract, and a joint and several contract, is very clear. It is argued, that each party to a joint contract is severally liable, and he is, in one sense—that if sued severally, and he does not plead in abatement, he is liable to pay the entire debt, but he is not severally liable in the same sense as he is on a joint and several bond, which instrument, though on one parchment or paper, in effect comprises the joint bond of all and the several bond of each of the obligors, and gives different remedies to the obligee. Another mode of considering this case is suggested by Bayley, B., in the case of *Leachmere v. Fletcher*, and was much discussed during argument, and leads us to the same conclusion. If there be a judgment against one of two contractors, and the other is sued afterwards, can he plead in abatement or not? If he cannot, he would be deprived of a right by the act of the plaintiff, without his privity or concurrence, by suing and obtaining judgment against the other. If he can, then he may plead in bar the

judgment against himself; and, if that be not a bar, the plaintiff might go on, either to obtain a joint judgment against himself and his co-contractor, so that he would be twice troubled for the same cause, or the plaintiff might obtain another judgment against the co-contractor, so that there would be two separate judgments for the same debt. Further, the one would form another exception to the general rule, that an action on a joint debt barred against one is barred altogether, the only exception now being, where one has pleaded matter of personal discharge, as bankruptcy and certificate. It is quite clear indeed, and was hardly disputed, that if there were a plea in abatement, both must be joined, and if they were, the judgment pleaded by one would be a bar to both; and it is impossible to hold that the legal effect of judgment against one of two, is to depend on the contingency of both being sued, or the one against whom judgment is obtained being sued singly, and not pleading in abatement. These considerations lead us satisfactorily to the conclusion, that where a judgment has been obtained for a debt as well as a tort, the right given by the record merges the inferior remedy by action for the same debt or tort against another party. During the argument, a decision of the Chief Justice Marshall, in the superior court of the United States, was cited as being contrary to the conclusion this court has come to: the case is that of *Sheeby v. Manderville*. We need not say that we have the greatest respect for every decision of that eminent judge, but we think the reasoning attributed to him in that report, is not satisfactory to us, and we have since been furnished with a report of a subsequent case, in which that authority was cited and considered, and in which the Supreme Judicial Court of Massachusetts decided, that in an action against two, on a joint note, a judgment against one was a bar. *Ward v. Johnson*. For these reasons we are of opinion that our judgment must be for the defendant.

Judgment for the defendant.

*King v. Hoare.* Exchequer, Michaelmas Term, 1844.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From Jan. 21st to Feb. 14th, 1845, both inclusive, with dates when gassed.

Shilton, Samuel Richard Parr, Nottingham. Jan. 21.  
 Thomas, Edmund, Worcester. Jan. 21.  
 Smith, William, jun., Sheffield. Jan. 24.  
 Estcourt, Charles Wyatt, Newport, Isle of Wight. Jan. 28.  
 Harvey, Richard, Dover. Jan. 28.  
 York, Josias Ball, Colleshill, Warwick. Jan. 31.  
 Hindson, Richard Grave, Penrith, Cumberland. Jan. 31.  
 King, Henry, Mayfield, Sussex. Feb. 4.  
 Rawlins, David Archibald Dixon, Market Harborough, Lancaster. Feb. 4.  
 Oldham, Henry, Dublin. Feb. 7.

Dryden, Erasmus Henry, Kingston-upon-Hull. Feb. 11.  
 Soames, Francis, Workingham, Berks. Feb. 14.

### DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.

*From Jan. 21st to Feb. 14th, 1845, both inclusive, with dates when gazetted.*

Tyler, Joseph, and Arthur James Lane, 7, South Square, Gray's Inn, Attorneys and Solicitors. Jan. 24.  
 Teale, Edward John, and Robert Wainhouse, Attorneys and Solicitors, Leeds. Jan. 24.  
 Hannen, William, and John Rutter, Attorneys and Solicitors, Shaftsbury, Dorset. Feb. 4.  
 King, Henry Wheeler, and George Ley King, Attorneys and Solicitors, Bristol. Feb. 14.  
 Bailey, Charles, and Henry Edwards, Attorneys and Solicitors, Winchester. Feb. 14.

### BANKRUPTCIES SUPERSEDED.

*From Jan. 21st, to Feb. 14th, 1845, both inclusive, with dates when gazetted.*

Burt, William, 53, Harrow Road, Paddington, Boarding and Lodging Housekeeper. Jan. 21.  
 Williams, Thomas, sen., Cardiff, Iron Founder. Jan. 21.  
 Dickin, Edward, Tycock, Denbigh. Feb. 11.

### BANKRUPTS.

*From Jan. 21st to Feb. 14th, 1845, both inclusive, with dates when gazetted.*

Argent, James, 49, Golden Lane, Barbican, Victualler. *Belcher*, Off. Ass.; *Cooke*, King Street, Cheapside. Jan. 31.  
 Ashbarry, Joseph Holm Lacy, Hereford, Farmer and Timber Merchant. *Whitmore*, Off. Ass.; *Lunwarne*, Hereford; *Suckling*, Union Street, Birmingham. Feb. 4.  
 Aston, William, sen., Aston-juxta, Birmingham, Victualler. *Bittleston*, Off. Ass.; *Chaplin*, Gray's Inn; *Harrison & Co.*, 8, Edmond Street, Birmingham. Feb. 4.  
 Atkinson, Anthony, and Francis Atkinson, Newcastle-upon-Tyne, Colour Manufacturers. *Wakley*, Off. Ass.; *Watson*, Newcastle-upon-Tyne; *Shield & Co.*, 26, Queen Street, Cheapside. Feb. 11.  
 Beard, John, Deptford, Kent, Builder. *Whitmore*, Off. Ass.; *Govett*, Upper North Place, Gray's Inn Road. Feb. 7.  
 Bellenger, Hippolite Francis, 10, Great Pulteney Street, Golden Square, (late of Spread Eagle Public House, 303, Oxford Street,) Victualler. *Bell*, Off. Ass.; *Robson*, Clifford's Inn. Feb. 11.  
 Blinkhorn, William, Little Bolton, Lancaster, Manufacturing Chemist. *Fraser*, Off. Ass.; *For*, 40, Finsbury Circus; *Earle*, Manchester. Jan. 31.  
 Bradshaw, James, 57, High Street, Camden Town, Coal Merchant. *Bell*, Off. Ass.; *Scaddington & Co.*, Gordon Street, Gordon Square. Feb. 7.

Brice, Samuel, 50, St. John Street, Tailor and Draper. *Graham*, Off. Ass.; *Garry*, Chancery Lane. Jan. 31.  
 Bullough, John, Huddersfield, York, Cabinet Maker. *Hope*, Off. Ass.; *Lewis & Co.*, Ely Place; *Fenton & Co.*, Huddersfield. Jan. 21.  
 Burrage, Charles, Newgate Market, Carcass Butcher and Cattle Dealer. *Pennell*, Off. Ass.; *Philipe*, 9, Gray's Inn Square. Jan. 28.  
 Burrell, James, and Thomas Hall, Thetford, Norfolk, Ironfounders. *Johnson*, Off. Ass.; *Johnson*, Chancery Lane. Feb. 11.  
 Burt, William, (late of 53, Harrow Road, and now of 86, Lisson Grove, New Road,) Lodging Housekeeper. *Alager*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Jan. 31.  
 Challenor, John, 45, White Street, Southwark, Grocer and Cheesemonger. *Alager*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. Feb. 11.  
 Chapman, Edward John, Bradford, York, (and also of Birkenhead, Chester,) Civil Engineer and Contractor. *Hope*, Off. Ass.; *Tebbs*, Essex Street, Strand. Jan. 21.  
 Christian, William Alexander, Newcastle Street, Strand, Innkeeper. *Pennell*, Off. Ass.; *Paynter & Co.*, Gray's Inn. Feb. 14.  
 Collins, John, Sheffield, Grocer and Corn Dealer. *Freeman*, Off. Ass.; *Duncan*, Featherstone Buildings, Holborn; *Unwin*, Sheffield; *Blackburn*, Leeds. Jan. 31.  
 Colt, William Henry, Long Melford, Suffolk, Grocer. *Follett*, Off. Ass.; *Raimondi & Co.*, South Square, Gray's Inn; *Downman*, jun., Sudbury. Feb. 7.  
 Cottrell, William, Compton Walk, St. Mary, Southampton, Tea Dealer and Grocer. *Johnson*, Off. Ass.; *Braikenridge*, Bartlett's Buildings, Holborn; *Newman*, Southampton. Feb. 11.  
 Dettmer, William, 50, Upper Marylebone Street, Piano Forte Manufacturer. *Pennell*, Off. Ass.; *Hodson & Co.*, King's Road, Gray's Inn. Jan. 24.  
 Evans, Joseph, Bourton-on-the-Hill, Gloucester, Innkeeper. *Hutton*, Off. Ass.; *Tilley*, Moreton-in-the-Marsh. Jan. 24.  
 Fairclough, William, Liverpool, Victualler. *Cazenove*, Off. Ass.; *Wilkin*, Furnival's Inn; *Wardle*, Union Street, Liverpool. Jan. 28.  
 Fielding, William, Taunton, near Ashton-under-Lyne, Hat, Plush, and Silk Manufacturer. *Stanway*, Off. Ass.; *Gregory & Co.*, Bedford Row; *Cooper*, Manchester. Jan. 31.  
 Fisher, Thomas, Selby, York, Linen Draper. *Freeman*, Off. Ass.; *Rushworth & Co.*, Staple Inn; *Sanderson*, Leeds. Jan. 21.  
 Flint, Algernon Lindsey, 62, Aldermanbury, and of Upper Clapton, Warehouseman. *Pennell*, Off. Ass.; *Cor*, Pinner's Hall, Old Broad Street. Feb. 14.  
 Flowers, Edward Cooper, Whitechurch, Buckingham, Cattle Dealer. *Belcher*, Off. Ass.; *Clase*, St. Mildred's Court, Poultry. Jan. 31.  
 Francis, Abasalom, Halkin, Flint, William Davey, Coniston, Lancaster, and Matthew Francis, Aberyatwith, Cardigan, Ironfounders. *Morgan*, Off. Ass.; *Cox & Co.*, Lincoln's Inn Fields; *Oldfield*, Holywell, Flintshire. Jan. 31.  
 Gray, Henry Peacock, Caroline Livery Stables, Caroline Street, Eaton Square, Horse Dealer and Livery Stable Keeper. *Turquand*, Off. Ass.; *Dupres*, Lawrence Lane, City. Feb. 11.  
 Greenwood, Richard, Bradford, York, Bookseller

- and Stationer. *Young*, Off. Ass.; *Nethersole*, New Inn; *Carius*, Albion Street, Leeds. Jan. 31.
- Harris**, Richard, and John Hill, 86, Newgate Street, Tailors. *Green*, Off. Ass.; *May*, Queen's Square, Bloomsbury. Jan. 31.
- Haward**, Charles Stephen, Colchester, Essex, Tal- low Chandler. *Whitmore*, Off. Ass.; *Read & Co.*, Friday Street; *Philbrick & Co.*, Colches- ter. Feb. 4.
- Hawkins**, George, Colchester, Essex, Clothier. *Groom*, Off. Ass.; *Linklater & Co.*, 115, Lead- enhall Street. Jan. 24.
- Haywood**, George, Luton, Bedford, Bricklayer, and Plasterer. *Belcher*, Off. Ass.; *Dyne*, Lincoln's Inn Fields; *Waring*, Luton, Bedford. Feb. 7.
- Hegginbotham**, Joseph, and George Peck, Great Bridgewater Street, Manchester, Machine Mak- ers. *Hobson*, Off. Ass.; *Makinson & Co.*, 3, Elm Court, Temple; *Atkinson & Co.*, 3, Norfolk Street, Manchester. Feb. 4.
- Hepworth**, John, and David Hepworth, Raistrick, Halifax, Yorksh., Cotton Warp Dyers. *Fearne*, Off. Ass.; *Lever*, King's Road, Bedford Row; *England & Co.*, Huddersfield. Jan. 31.
- Herbert**, Robert, Mayow (late of Truro, Cornwall, now of Reading, Berks.) Tea Dealer and Grocer. *Tarquand*, Off. Ass.; *Hill & Co.*, Bury Court, St. Mary Axe. Feb. 14.
- Hill**, Richard, Exeter, Currier. *Hernaman*, Off. Ass.; *Terrell*, St. Martin's, Exeter; *Terrell*, 14, Gray's Inn Square. Feb. 14.
- Howell**, William, jun., Liverpool, Bookseller. *Bird*, Off. Ass.; *Corruthwaite & Co.*, Old Jewry Chambers; *Fisher & Co.*, Liverpool. Feb. 14.
- Humm**, Samuel, (late of 146, Brick Lane, Bethnal Green,) Silk Hat and Cap Manufacturer. *Edward*, Off. Ass.; *Horwood & Co.*, 27, Austin Friars. Feb. 4.
- Hurrell**, Allen, (late of Brixton, Surrey, now of 22, Park Place, St. John's Wood, Wine Merchant and Commission Agent. *Whitmore*, Off. Ass.; *Chilcote*, George Street, Mansion House. Jan. 28.
- Irving**, John, Blackburn, Lancaster, Linen and Woollen Draper. *Hobson*, Off. Ass.; *Milne & Co.*, Temple; *Wilding & Co.*, Blackburn. Jan. 31.
- Isaacs**, Henry, Yarmouth, Clothes Dealer and Fruiterer. *Graham*, Off. Ass.; *Sal & Co.*, Manchester; *Reed & Co.*, Friday Street. Jan. 24.
- Jackson**, George, jun., Hertford, Upholsterer. *Almger*, Off. Ass.; *Stevens & Co.*, Queen St., Cheapside. Jan. 21.
- Jones**, Robert, Liverpool, Boot and Shoe Maker. *Morgan*, Off. Ass.; *Troughton*, 74, Paradise Street, Liverpool; *Keddell & Co.*, Lime Street. Jan. 31.
- Kelsall**, John, Hanley, Stafford, Fishmonger. *Bit- tleston*, Off. Ass.; *Jackson*, Gray's Inn; *Har- rison & Co.*, 8, Edmund Street, Birmingham. Jan. 28.
- Kempe**, Nicholas John, Liverpool, Ship Owner. *Turner*, Off. Ass.; *Vincent & Co.*, Temple; *Minskull*, Liverpool. Jan. 21.
- Kimber**, Henry, and William Kimber, Old Trinity House, Water Lane, Wine and Cider Mer- chants. *Green*, Off. Ass.; *Justin & Co.*, New Bridge Street, Blackfriars. Jan. 21.
- Lester**, William Upton, (late of Aldermanbury, Silk Manufacturer, and now of Newcastle-under- Lyme,) Dealers in Potters' Materials. *Whit- more*, Off. Ass.; *White & Co.*, Bedford Row;
- Ward & Co.*, Newcastle-under-Lyme. Jan. 31.
- Lupton**, George Henry, Leeds, York, Flax Spin- ner. *Young*, Off. Ass.; *Cox*, Size Lane; *Lee*, Leeds. Jan. 21.
- Macwilliam**, James, Gloucester, Hosier. *Miller*, Off. Ass.; *Richards & Co.*, Tewkesbury, Glou- cesterhire. Feb. 14.
- Miller**, James, Southampton, Boot and Shoe Maker. *Groom*, Off. Ass.; *Smith & Co.*, 12, Serjeant's Inn, Fleet Street; *Markey & Co.*, Southamp- ton. Feb. 4.
- Moore**, Charles, 29, St. John Street, Clerkenwell, Carver and Gilder. *Whitmore*, Off. Ass.; *Champion*, Ely Place, Holborn. Jan. 28.
- Oldham**, John, Kingston-upon-Hull, Iron Founder. *Fearne*, Off. Ass.; *Willis & Co.*, Tokenhouse Yard; *Colbeck & Co.*, Hull; *Horvfall & Co.*, Leeds. Feb. 14.
- Paul**, William Cheatte, Romford, Essex, Sheep Salesman and Cattle Dealer. *Groom*, Off. Ass.; *Hillery & Co.*, Fenchurch Street. Feb. 11.
- Peters**, John, Godstone, Surrey, Innkeeper. *Green*, Off. Ass.; *Blake & Co.*, 6, King's Road, Bed- ford Row; *Dempster*, Brighton. Feb. 11.
- Rawlings**, Francis John, the Promenade, Chelten- ham, Gloucester, Cabinet Maker. *Hutton*, Off. Ass.; *Newbon & Co.*, Doctors' Commons. Feb. 14.
- Rayner**, James Burton, and Thomas Scarlett Carter, Coleman Street, Lamp Manufacturers. *Almger*, Off. Ass.; *Sterens & Co.*, Queen Street, Cheap- side. Feb. 4.
- Richardson**, John, 37, Fish Street Hill, and 73, Cornhill, Boot and Shoe Maker. *Edwards*, Off. Ass.; *King*, St. Mary Axe. Feb. 7.
- Robinson**, Edwin Llewellyn, Moulton, Lincoln, Fellmonger. *Christie*, Off. Ass.; *Bonner & Co.*, Spalding; *Motteram & Co.*, Birmingham. Jan. 31.
- Rugg**, Samuel, Chamberlayne Town, Southampton, Carpenter and Builder. *Graham*, Off. Ass.; *Pateron*, Bouverie Street. Feb. 7.
- Sanderson**, John, Liverpool, Merchant. *Cusano*, Off. Ass.; *Birch & Co.*, Gt. Winchester Street; *Stockley & Co.*, Liverpool. Feb. 14.
- Schott**, John George, Manchester, and John Caspar Lavater, Aldermanbury Postern, Merchants. *Stanway*, Off. Ass.; *Atkinson & Co.*, Norfolk Street, Manchester; *Makinson & Co.*, Temple. Jan. 21.
- Schottlaender**, William Edward, 1, Poplar Row, New Kent Road, Merchant and Commission Agent. *Belcher*, Off. Ass.; *Bearr*, 4, Bouverie Street, Fleet Street. Jan. 21.
- Smeeton**, Samuel, Sibbertoft, Northampton, and of 62, West Smithfield, Cattle and Sheep Sales- man. *Johnson*, Off. Ass.; *Weller*, King's Road, Bedford Row. Jan. 24.
- Smith**, William, and Robert Smith, Bow Lane, and of Aberdeen, Warehousemen. *Pennell*, Off. Ass.; *Parkes & Co.*, Bedford Row. Jan. 28.
- Steadman**, Richard, and William Adie, Birming- ham, Button Makers. *Christie*, Off. Ass.; *Harrison & Co.*, Birmingham. Feb. 11.
- Sturia**, Henry Charles, 52, Seymour Street, Euston Square, Glass and China Dealer. *Almger*, Off. Ass.; *Strut*, Buckingham Street, Strand. Jan. 21.
- Taverner**, Samuel, 9, Sovereign Mews, Paddington, Bricklayer and Builder. *Johnson*, Off. Ass.; *Chisholme*, Cook's Court, Lincoln's Inn. Feb. 7.

Turner, Joseph, and Samuel Weeks, Bevois Street, Southampton, Stone Masons and Builders. *Turquand*, Off. Ass.; *Pateron*, Bouverie Street, Fleet Street. Feb. 14.

Tyler, Spencer William, Walcot Place, Lambeth, Carpenter and Undertaker. *Graham*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. Feb. 11.

Waller, Thomas Buttermere, and John Waller, Ipswich, Suffolk, Grocers. *Turquand*, Off. Ass.; *Russell & Co.*, High Street, Southwark. Jan. 21.

Ward, John, Ely, Cambridge, Dealer in Glass and Earthenware. *Graham*, Off. Ass.; *Cresbie & Co.*, Old Jewry. Jan. 21.

Watling, Lionel, Gilbert Street, St. George Hanover Square, Butcher. *Edwards*, Off. Ass.; *Pain & Co.*, 83, Basinghall Street. Jan. 24.

Watson, Samuel, Saw Mills, Highbridge, Burnham, Somerset. *Acraman*, Off. Ass.; *Gray*, 6, Exchange Buildings, Bristol, and Commercial Rooms, Bath. Feb. 14.

Weston, Thomas, Southampton, Plumber, Painter, and Glazier. *Bell*, Off. Ass.; *Jones & Co.*, Bedford Row. Feb. 4.

White, John, 6, Great St. Andrew Street, Seven Dials, Leather Seller. *Johnson*, Off. Ass.; *Hall*, Rupert Street, Haymarket. Feb. 14.

Whidow, John, Manchester, Laceman. *Pott*, Off. Ass.; *Reed & Co.*, Friday Street; *Sale & Co.*, Fountain Street, Manchester. Feb. 4.

Whyte, Thomas, Worcester Street, Birmingham, Hardware Merchant. *Valpy*, Off. Ass.; *Ryland & Co.*, Cherry Street, Birmingham. Jan. 31.

Wicks, Jacob, 2, Peter Street, St. Peter's, Bristol, Grocer and Tea Dealer. *Acraman*, Off. Ass.; *Gray*, Exchange Buildings, Bristol. Feb. 14.

Wilkinson, Charles Maxwell, Ulverston, Lancaster, Wine and Spirit Merchant. *Fraser*, Off. Ass.; *Moss*, 4, New Bridge Street, Blackfriars; *Yarker*, Ulverston, Lancaster. Jan. 28.

### PRICES OF STOCKS.

*Tuesday, Feb. 18th, 1845.*

Bank Stock div. 7 per Cent.	211½ a 12½ a ½
3 per Cent. Reduced Annuities	100½ a 99½ a 100
3 per Cent. Consols Annuities	99½ a ½ a ½ a ½
New 3½ per Cent. Annuities	103½ a ½
Long Annuities, expire 5th Jan. 1860	12½ a ½
Ann. for 30 years, expire 10th Oct. 1859	11½
India Stock, 10½ per Cent.	78½
India Bonds, under 1000l.	68s. pm.
South Sea Stock New Anns., div. 3 per Cent.	98½
3 per Cent Consols for Acct., 27 Feb.	99½ a ½ a ½
Commissioners for the Reduction of the National Debt, purchased 100, 3 per Cent. Reduced.	
Exchequer Bills, 100l. 1½d.	53s. a 6s. pm.
Do. 500l. "	53s. a 6s. pm.
Do. small "	56s. a 3s. pm.
Do. advertised.	

### CLOSE COPIES OF CHANCERY PLEADINGS, &c.

THE Lord Chancellor having received a suggestion that the practice of allowing close or brief copies to be made at the Record and Affidavit Offices was liable to abuse, his lordship gave directions for its being stopped. A memorial, signed by many of the most eminent

solicitors, has been presented, praying that such close or brief copies may still be permitted.

In Injunction cases, and others which require peculiar despatch, the accommodation of obtaining these copies is of the utmost consequence, and the matter having been ably explained in the memorial of the solicitors, the Lord Chancellor has signified his intention to allow the practice to be continued, under certain restrictions, which will prevent abuse.

We have obtained a copy of the memorial, but not in time conveniently to insert it at present.

### PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

#### House of Lords.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment.

Appeal in Criminal Cases.

Debtors and Creditors.

#### BILL FOR SECOND READING.

Service of Common Law Process Abroad.

Service of Scotch Process.

#### House of Commons.

#### NOTICES OF NEW BILLS.

Clerks of the Peace.

Medical Practice.

Roman Catholics' Relief.

Abolishing Punishment of Death.

Poor Law Settlement.

Prisoners' Counsel.

#### BILLS IN COMMITTEE.

Consolidation of Railway Clauses.

Consolidation of Public Companies' Clauses.

Land Clauses Consolidation.

#### ATTORNEYS' CERTIFICATE DUTY.

Further petitions have been presented from the country for the repeal of the Certificate Duty, and the petition of the Incorporated Law Society will soon be presented.

### THE EDITOR'S LETTER BOX.

NOTICES of several new books which we have received are deferred, but will soon appear.

If the injuries done to the carriage of the attorney by his articulated clerk, were occasioned by the wilfulness or negligence of the clerk, the executors of the father would be liable under the covenant in the articles, which extends not only to papers and writings but other property entrusted to the care of the clerk.

"A Subscriber" inquires of some commercial reader, whether it is absolutely necessary, on arresting a ship, her cargo and freight, &c. in dock, to place a man in possession? or whether notice of the arrest given to the dock-master, is not a sufficient security?

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, MARCH 1, 1845.

—"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

**ON THE LAW OF DEODANDS.**

As a bill is now pending in parliament for abolishing deodands, it may be well to notice this subject.

The law of deodands is undoubtedly in an anomalous and absurd state. A deodand was originally levied as an expiation for the souls of such as were snatched away by sudden death, and was applied to purchase masses for the good of their souls, and hence, according to Blackstone,<sup>a</sup> arose the distinction, when an infant, under the age of discretion, is killed by a fall from a cart, a horse, or the like, not being in motion, no deodand arises; whereas if the accident happens to an adult person, the thing is entirely forfeited. The reason of this distinction has now passed away, and is in fact ascribed by Sir M. Hale to another cause.

If an infant, however, is killed by a horse, an ox, or other animal, of his own motion, or if a cart run over him, then the distinction ceases, and a deodand will equally arise as when an adult is killed; or, in the words of Bracton,<sup>b</sup> "*Omnia quæ movent ad mortem sunt Deo danda.*" It is the thing on which the penalty is fixed, not the person who uses the thing. Thus, if another man takes my sword and kills a third person, my sword is forfeited,<sup>c</sup> and I may be mulcted although I have not been to blame.

This law of deodands leads to a form in criminal pleading, the reason of which the

unlearned reader can hardly comprehend. In all indictments for homicide, the instrument of death, and the value, are presented and found by the grand jury, (as, that the stroke was given by a certain pen-knife, value sixpence,) that the king or his grantee may claim the deodand.

Again, for accidents on the high seas no deodands are due, that being out of the jurisdiction of the common law; but if a man falls from a boat or ship in fresh water and is drowned, it hath been said that the vessel or cargo are in strictness of law a deodand.<sup>d</sup>

In this state of the law, the finding a deodand has in most cases degenerated into a mere form. In Blackstone's time, he says,<sup>e</sup> "Juries have of late very frequently taken upon themselves to mitigate that forfeiture, by finding only some trifling thing, or part of an entire thing, to have been the occasion of death. And in which cases, although the finding by the jury be hardly warrantable by law, the Court of King's Bench hath generally refused to interfere on behalf of the lord of the franchise to assert so inequitable a claim." It must be remembered, however, that in taking this course the juryman evades his oath. In some recent cases juries have thought it right to give large damages, in cases of accident the result of wilful negligence. It may be doubted, however, whether this was not as much in violation of their oaths as assessing a nominal sum; and the Court of Queen's Bench, during the last twelve years, has almost always

<sup>a</sup> 1 Com. 312.

<sup>b</sup> Lib. 3, c. 5.

<sup>c</sup> 1 Dr. & Stu. d. 2, c. 51.

<sup>d</sup> 3 Inst. 58.

<sup>e</sup> 1 Com. 362.

quashed the inquisitions in which deodands were given, and held that the remedy ought to be against the parties guilty of the negligence.

Some further anomalies in this branch of the law were mentioned by Lord Campbell and the Lord Chancellor on Monday last. "It did not signify," said the former noble and learned lord, "whether the death were caused by the man falling on a chattel, or by the chattel falling on the man. It was said, however, that if the thing leading to death were affixed to the freehold, it was not a deodand; and if a bell falling from a steeple killed any one, it was no deodand, because the bell was consecrated, and our law being founded partly on the Mosaic and partly on the Athenian law, made a deodand only of what was accursed, and the bells were blessed and not accursed." He also observed, it was strange that in this Protestant country a law should remain which had been abolished in all the Roman Catholic countries of Europe, and that England should now be the only country in Europe where this rule continued. The Lord Chancellor mentioned a case which he had met that morning: "A man might be riding on a cart drawn by three horses,—if the cart were overturned and the man were crushed by the wheel, the cart and horses would be a deodand; but if a load of hay were going that way, and the man so fell from the cart that the wheel of the waggon passed over him and killed him, not only would the cart and horses, but also the waggon, the hay, and all would be deodands. One reason in favour of the bill was, that the law was never acted on, and if it were acted on, it was done so unequally and for collateral objects and purposes, and it was right, therefore, that it should be abolished."

We believe that the Lord Chancellor is perfectly right in saying that the law is not acted on. The finding of the jury is not sufficient to vest the money in the executors of the deceased. Proceedings must be instituted in the Crown Office; and when a verdict is recovered, the execution, as we believe, must be against the particular thing which was the cause of the accident,—the cart, omnibus, steam-engine, &c. Under these circumstances, it must rarely be worth while to incur the expense of the proceedings, the payment of which must at best come out of so uncertain a source.

But although deodands should properly

be abolished, an action ought to be maintainable against any person causing death through neglect, &c., notwithstanding the death of the person injured. We are glad, therefore, to see that a bill has been brought in 'for compensating the families of persons killed by accidents.' This appears to us a proper alteration of the law.

## LAW OF COSTS.

### LIABILITY OF TWO OR MORE DEFENDANTS EMPLOYING THE SAME SOLICITOR IN DEFENCE OF A CHANCERY SUIT. — MR. SMITH'S CHANCERY PRACTICE.

As the late statute 6 & 7 Vict. c. 78, has given a greater facility than that which existed previously, to the taxation of solicitors' bills of costs, and as the number of bills to be submitted to the ordeal of taxation is on this account likely to be much increased, it is highly important that the principles which are to govern such taxation of the allowance to be made to solicitors should be rightly understood, and if any erroneous doctrine prevails as to those principles, that the error should be made the subject of comment, and if possible, corrected. It is on this account, as well as with reference to the general importance of the subject in a legal point of view, that we have thought it right to bring under the attention of our readers what appears to us to be a mis-statement of the law, as laid down by Mr. Smith in his well-known work on "Chancery Practice," with respect to the liability of two or more defendants who employ one and the same solicitor to conduct their defence in a suit in chancery, as between themselves and that solicitor.

In vol. ii. p. 466, of the third edition of the work in question, Mr. Smith has thus expressed himself.

"If one solicitor appear for three defendants, and the bill is dismissed with costs as to one of them, the plaintiff can only be compelled to pay the costs of such proceedings as exclusively relate to that defendant, and one-third of the costs of the proceedings taken jointly for all three defendants. *Indeed a defendant to a suit in Chancery, although appearing by the same solicitor that is employed for the other defendants, is not liable to such solicitor for more than his own share of the costs of the proceedings taken for all the defendants jointly, unless he has undertaken to be answerable for more than his own share. Plaintiffs in a suit are jointly and severally liable to their solicitor for the whole costs of the suit.*"

It is, perhaps, not altogether foreign from, but will, perhaps, be rather pertinent to the subject which we propose to discuss, if in the first place we remark, that Mr. Smith does not appear to us to be very accurate, even in his definition of the liability of joint plaintiffs to their solicitor, when he states this liability for the whole costs of the suit to be a *several liability as well as a joint one*. From the circumstance of the nature of the interest of co-plaintiffs being joint, added to the circumstance of their necessarily appearing by one and the same solicitor, the retainer, and the implied contract for payment of the costs founded upon it, would undoubtedly, *primâ facie*, be joint likewise. If, however, the liability be *joint*, then it could not, (unless upon some *special contract*,) be *several* also. On the contrary, if one of such co-plaintiffs were to be sued alone, he might in that case plead the non-joinder of the other co-plaintiffs in abatement, and so defeat the separate action.

Without, however, dwelling further on this point, we proceed to that part of Mr. Smith's statement which is the more immediate object of these remarks, and which relates to the liability of joint defendants for the costs of their solicitor—and here we would observe, that it seems to us to be difficult for any one reading that portion of the above passage which is printed in italics to come to any other conclusion, than that the meaning intended to be conveyed by its author is, that as between the solicitor and the client there is in every case, without any distinction, (unless there is some special undertaking given to the contrary,) a different rule of liability on the part of the latter, according to the circumstance, whether the solicitor is employed to act in the *prosecution* or in the *defence* of a suit in Chancery.

Mr. Smith quotes no authority in support of the position so laid down by him in the passage above quoted, and we believe no such authority can be found in the books, and opposed as that position is to all our preconceived notions on the law of contract, we cannot help thinking that it cannot be supported, and that he has confounded the course of proceeding adopted in the taxation of costs between the parties to a suit in Chancery, with the question of the liability of the client to the solicitor, two things, which have no sort of connexion with each other.

There can, indeed, be no doubt, that the rule as to the mode of taxing the costs of

defendants employing the same solicitor where those costs have to be ascertained in the suit between the parties, is precisely as stated by Mr. Smith; but we conceive that the reason why in the case put before him, the defendant is allowed no more than the whole of his separate costs, and one-third of the joint costs of himself and the other two defendants is not because he is of necessity in the first instance liable to that extent and no more to his own solicitor, but because even if he be liable to the whole costs of the defence by having given a joint retainer with the other defendants, still as he will ultimately be entitled to contribution from his co-defendants, so as in the end to reduce his liability within that limit, it would be unreasonable to make the opposite party pay him more than he would in the end have to pay himself. That such a right of contribution exists, is evident from a recent case in the Court of Common Pleas, in which it was expressly held, that if A. and B, directors of a joint-stock company, on being sued for debts due from and for damages done by the company, employ C. as their attorney to defend them on their joint responsibility, and A. afterwards pays the whole of C.'s costs of defending the actions, the latter is entitled to maintain an action against B. for contribution.\*

The rule in the common law courts of taxing the costs as between party and party of one of several defendants employing the same attorney, who has obtained a verdict in his favour, is precisely the same as that laid down by Mr. Smith,<sup>b</sup> and yet no one ever imagined on this account, that the rule which regulates the mode of ascertaining the costs as between the parties, at all affected the question of the liability of those co-defendants when it came to be considered as between themselves and the attorney whom they had employed. On the contrary, the law appears to be clear, that the question whether there is a joint retainer and a joint liability, is entirely one of fact to be decided by the jury.<sup>c</sup>

\* *Edger v. Knapp*, 5 Manning & G. 753.

<sup>b</sup> *Griffiths v. Kynaston*, 2 Tyrw. 757. And see also *Bartholomew v. Stephens*, 7 Dowl. 808, and 5 Mee. & W. 386; *Norman v. Cleminson*, 4 Mann. & G. 243, 1 Dowl. N. S. 718; *Alderson v. Waistell*, 13 L. Journal, N. S., Q. B. 254; *Gambrill v. Lord Falmouth*, 5 Ad. & E. 403; *Griffith v. Jones*, 2 Crompt. M. & R. 333.

<sup>c</sup> *Hellings v. Gregory*, 10 Moore 337, and 1 Carr. & P. 627.



Another position which appears clearly deducible, from the cases relating to the retainer of one and the same attorney to conduct the defence of several defendants in an action at law, is this:—that where such defendants join in their defence it will be taken *primâ facie*, that the attorney was employed by them *jointly*.<sup>d</sup> And again, it was held in a recent case in the Court of Exchequer, that where four persons employed the same attorney to conduct their defence to an action of trespass, and such persons joined in their defence, they thereby incurred a joint liability to the attorney so employed, and that the costs to which they had been put in the defence, was a joint and not a several damage.<sup>e</sup>

Having thus, and as we conceive satisfactorily, shown the rules which govern the liability of two or more parties, defendants, employing one and the same attorney in the defence of proceedings *at law*, it seems to us to follow from this that the same identical rules will also be applicable to the case where two or more defendants employ one and the same solicitor for their defence in a suit in *Chancery*. It is true indeed that in the case of a suit in Chancery, it is by no means an uncommon occurrence for one defendant to employ, for the purpose of his defence, the same solicitor as is employed by some other defendant, without having any communication with such other defendant either previously to or during the whole progress of the suit; and where such a case arises it would, no doubt, be unjust to hold that the party coming in and adopting the solicitor previously employed by his co-defendant, should be responsible for the whole costs of the defence, to the incurring of a large portion of which he has been no party. It also not unfrequently happens that the defence of one defendant differs most materially from that of another defendant employing the same solicitor, and in such a case it would, perhaps, be equally unjust to hold that the one defendant should be responsible for the costs of the other's defence from which he has derived no benefit. Admitting all this, however, still it seems to us to prove no more than this; that under the circumstances just stated, or similar, a several liability ought to be in-

ferred, leaving, however, quite untouched, the point for which we venture to contend, namely, that there is no abstract rule like that laid down by Mr. Smith, as to the liability of co-defendants employing one and the same solicitor for their defence, but that the question of a joint or several liability is always one of fact, depending on the circumstances of each particular case.

We would also contend by analogy to what has been shown to be the law with respect to the costs of a defence to an action at law, that where two or more defendants having the same interest, employ one and the same solicitor, and join in their defence to a suit in Chancery, the case in no respect differs from that of two or more plaintiffs joining for their common interest in the prosecution of a suit, but that both in the one case as well as in the other there is *primâ facie* a joint liability on the part of the parties employing the solicitor for the whole of the costs incurred.

We entertain so high an opinion of the general usefulness of Mr. Smith's work, and of the benefit which he has conferred on the profession by his labours, that we shall rejoice to find that in a future edition he has availed himself of these remarks for the correction of the mistake into which we conceive him to have fallen, in the passage above quoted.

#### NOTICES OF NEW BOOKS.

*Principles of the Law of Real Property, intended as a First Book for the use of Students in Conveyancing.* By Joshua Williams, Esq., of Lincoln's Inn, Barrister-at-law. S. Sweet: 1845. Pp. 394.

STUDENTS of the law are in these days assuredly placed under far more favourable circumstances than their predecessors. They have not only the Commentaries of Blackstone, edited in various modes by different annotators, but they have summaries of divers branches of the law for their especial use and convenience. They are not driven to the old text books, but may find each department of study, so far as practicable, made easy to the most moderate capacity.

As "First Books" for the student, according to the design of the author before us, these publications have their utility; and without entering at large into the discussion of their separate merits, we deem it our province to point out the nature and

<sup>d</sup> *Sterling v. Cozens*, 3 Dowl. P. C. 782.

<sup>e</sup> *Pechell v. Watson*, 8 Mees. & W. 691; and see also *Barrett v. Collins*, 10 Moore 446, to the same effect.

scope of this new claim to the attention of the conveyancing student. We need not compare the labours of our author with Blackstone's volume on the *Rights of Things*, for Mr. Williams professes not to present the student with so ample and varied an entertainment as is afforded in the *Commentaries*, neither, (as he says,) one so sparing and frugal as the principles of Mr. Watkins, nor so indigestible as the well-packed *Compendium* of Mr. Burton. He puts his claim on no other ground than that of supplying "a First Book for the use of students in conveyancing, as easy and readable as the nature of the subject will allow."

The author commences with an introductory chapter on the several classes of property, and then divides his work into five parts. The first part treats of Corporeal Hereditaments, and herein of—1, of an estate for life; 2, of an estate tail; 3, of an estate in fee simple; 4, of the descent of an estate in fee simple; 5, of the tenure of an estate in fee simple; 6, of joint tenants and tenants in common; 7, of a feoffment; 8, of uses and trusts; 9, of a lease and release; 10, of a will of lands; 11, of the mutual rights of husband and wife.

The second part comprises the Law of Incorporeal Hereditaments, arranged under the heads of—1, of a reversion and a vested remainder; 2, of a contingent remainder; 3, of an executory interest; including the means by which executory interests may be created; and the time within which executory interests must arise; 4, of hereditaments purely incorporeal.

In the third part the author considers the subject of Copyholds, treating—1, of estates in copyholds; 2, of the alienation of copyholds.

The fourth part relates to personal interests in real estate, under the heads of—1, of personal property and its alienation; 2, of a term of years; 3, of a mortgage debt.

And the fifth part treats of Title.

From an elementary book of this nature it will not be expected that we should submit any extracts to our readers. We might indeed find occasion to do so in regard to the recent acts relating to real property, but they are only so far noticed as appeared requisite for the information of the student, and no additional light has been thrown on the construction of the Transfer of Property Act.

We shall however select the remarks of

Mr. Williams on the subject of the length of Deeds of Conveyance, and the mode of remunerating both branches of the profession. This subject, so frequently discussed of late, is well treated by our author. He observes that—

"The adherence of lawyers, by common consent, to the same mode of framing their drafts, has given rise to a great similarity in the outward appearance of deeds; and the eye of the reader is continually caught by the same capitals, such as 'THIS INDENTURE,' 'AND WHEREAS,' 'NOW THIS INDENTURE WITNESSETH,' 'TO HAVE AND TO HOLD,' &c. This similarity of appearance seems to have been mistaken by some for a sameness of contents,—an error for which any one but a lawyer might perhaps be pardoned. And this mistake, coupled with a laudable anxiety to save expense to the public, produced not very long ago a plan for conveying small freeholds by way of schedule. This plan, as might have been expected, proved abortive; nor is it possible that any schedule should ever comprehend the multitude of variations to which purchase deeds are continually liable. In the midst of this variety, the adoption, as nearly as possible, of the same framework, is a great saving of trouble, and consequently of expense; but, so long as the power of alienation possessed by the public, is exercisable in such a variety of ways, and for such a multitude of purposes as is now permitted, so long will the conveyance of landed property call for the exercise of learning and skill, and so long also will it involve the expense requisite to give to such learning and skill its proper remuneration. The remuneration, however, which is afforded to the profession of the law, is bestowed in a manner which calls for some remark. In a country like England, where every employment is subject to the keenest competition, there can be little doubt but that, whatever method may be taken for the remuneration of professional services, the nature and quantity of the trouble incurred must, on the average and in the long run, be the actual measure of the remuneration paid. The misfortune is, that when a wrong method of remuneration is adopted, the true proportion between service and reward is necessarily obtained by indirect means, and therefore, in a more troublesome, and, consequently, more expensive manner, than if a proper scale had been directly used. In the law, unfortunately, this has been the case, and there seems no good reason why any individual connected with the law should be ashamed or afraid of making it known. The labour of a lawyer is very different from that of a copyist or printer; it consists first and chiefly in acquiring a minute acquaintance with the principles of the law, then in obtaining a knowledge of the facts of any particular case which may be brought before him; and lastly, in practically applying to such case the principles he has previously learnt. But, for the last and least of these

items alone, does he obtain any direct remuneration; for deeds are now paid for by the length, like printing or copying, without any regard to the principles they involve, or to the intricacy or importance of the facts to which they relate; and, more than this, the rate of payment is fixed so low, that no man of education could afford, for the sake of it,—first, to ascertain what sort of instrument the circumstances may require, and then to draw a deed containing the full measure of ideas of which words are capable. The payment to a solicitor for drawing a deed is fixed at one shilling for every seventy-two words, denominated a *folio*; and the fees of counsel, though paid in guineas, average about the same. The consequence of this false economy on the part of the public has been, that certain well known and long established lengthy forms, full of synonyms and expletives, are current among lawyers as *common forms*, and by the aid of these, ideas are diluted to the proper remunerating strength; not that a lawyer actually inserts nonsense simply for the sake of increasing his fee; but words, sometimes unnecessary in any case, sometimes only in the particular case in which he is engaged, are suffered to remain, sanctioned by the authority of time and usage. The proper amount of verbiage to a common form is well established and understood, and whilst any attempt to exceed it is looked on as disgraceful, it is never likely to be materially diminished till a change is made in the scale of payment. The case of the medical profession is exactly parallel; for, so long as the public think that the medicine supplied is the only thing worth paying for, so long will cures ever be accompanied with the customary number of little bottles. In both cases the system is bad; but the fault is not with the profession, who bear the blame, but with the public, who have fixed the scale of payment, and who, by a little more direct liberality, might save themselves a considerable amount of indirect expense. If physicians' prescriptions were paid for by their length, does any one suppose that their present conciseness would long continue?—unless indeed the rate of payment were fixed so high as to leave the average remuneration the same as at present. The student must, therefore, make up his mind to find in legal instruments a considerable amount of verbiage; at the same time he should be careful not to confound this with that formal and orderly style, which facilitates the lawyer's perusal of deeds, or with that repetition which is often necessary to exactness without the dangerous aid of stops."

### ALTERATION IN THE ALIEN LAW.

WE have already called attention to the alteration made by the act of last session, (7 & 8 Vict. c. 66,) relating to aliens,

see 28 L. O., 426; and we then said that by obtaining a certificate an alien might enjoy all the rights of a natural British subject, with certain exceptions. We now give the order as to the mode of enrolling such certificate:—

"I do hereby direct that any person desiring to enrol a certificate issued by one of her Majesty's principal secretaries of state, pursuant to the statute 7 & 8 Vict. c. 66, shall produce to the secretary of the Master of the Rolls the *same certificate, together with a certificate of a Judge or of a Master or Master Extraordinary in Chancery to be endorsed thereon, or written at the foot thereof*, that the oath directed by the said statute to be taken has been taken and subscribed by the memorialist to whom the certificate has been granted by the secretary of state; and that thereupon and after obtaining a fiat for that purpose from the Master of the Rolls, the clerk of the inrolments shall enrol the said certificate issued by the said secretary of state, and also the said certificate of the Judge, or Master, or Master Extraordinary in Chancery, and that the same when enrolled, may be inspected and copies thereof may be made in the same manner as in the case of other documents enrolled for safe custody in Chancery.

"(Signed)

LYNDHURST."

### PRACTICAL DIRECTIONS.

The oath, according to the form prescribed by the act, should be written on a separate sheet of paper, and *taken and subscribed* by the party, and the usual jurat signed by the Judge or Master before whom the same is so taken.

There should then be written on the secretary of state's certificate, a certificate in the form following:—

"I, A. B., do hereby certify that the above-named C. D. hath this day taken and subscribed before me the oath prescribed by the above-mentioned act of parliament.

"Dated this      day of      184

"A. B.,

"A Master Extra. in the High Court of Chancery."

## PARLIAMENTARY RETURNS.

## SUITORS' FUND.

The following is the Return from the Accountant-General of the Court of Chancery, pursuant to the 5 Vict. c. 5, s. 63, from the 2nd October 1843, to 1st October 1844.

PAYMENTS.			CASH.		
	£	s. d.	£	s.	d.
Paid Lord Chancellor's salary . . . . .	..	..	10,000	0	0
— Vice-Chancellor Bruce . . . . .	..	..	5,000	0	0
— Vice-Chancellor Wigram . . . . .	..	..	5,000	0	0
— Eleven Masters' salaries, at 2,500 <i>l.</i> per annum (exclusive of one quarter for one Master's salary, due but not paid, 1 October 1844) . . . . .	26,875	0 0			
— Accountant-General's salary as Master . . . . .	600	0 0			
Total Masters . . . . .			27,475	0	0
— Accountant-General's salary . . . . .	900	0 0			
— Expenses of office, office-keeper, rates, stationery, &c. . . . .	450	0 0			
— Twenty-two Clerks' salaries . . . . .	6,610	0 0			
— Pension to a retired Chief Clerk, 600 <i>l.</i> , and to a retired Clerk, 400 <i>l.</i> . . . . .	1,000	0 0			
Total Accountant-General's Office . . . . .			8,960	0	0
— Two Examiners' salaries (in part) remainder being charged on the Suitors' Fee Fund . . . . .	600	0 0			
— Retired Examiner's pension . . . . .	200	0 0			
— Retired Examiner's Clerk's pension . . . . .	100	0 0			
Total Examiners . . . . .			900	0	0
— Clerk of Affidavit's increased salary . . . . .	..	..	300	0	0
— Three Clerks to assist in the Report-office . . . . .	..	..	300	0	0
— Officers of the Lord Chancellor's Court . . . . .					
Usher . . . . .	300	0 0			
Court-keeper . . . . .	90	0 0			
Persons to keep order . . . . .	160	0 0			
Tipstaff . . . . .	90	2 2			
Serjeant-at-Arms . . . . .	1,183	11 1			
— Officers of the Vice-Chancellor of England : . . . . .					
Secretary . . . . .	500	0 0			
Usher . . . . .	200	0 0			
Trainbearer . . . . .	100	0 0			
— Officers of Vice-Chancellor Bruce : . . . . .					
Secretary . . . . .	300	0 0			
Usher . . . . .	200	0 0			
Trainbearer . . . . .	100	0 0			
Court-keepers . . . . .	80	0 1			
— Officers of the Vice-Chancellor Wigram . . . . .					
Secretary . . . . .	300	0 0			
Usher . . . . .	200	0 0			
Trainbearer . . . . .	100	0 0			
Court-keepers . . . . .	80	0 0			
Total Officers of the Court . . . . .			3,983	13	4
— Solicitor to the Suitors, in lieu of Costs . . . . .	600	0 0			
Disbursements . . . . .	123	15 7			
			723	15	7
— Surveyor . . . . .	..	..	77	13	4
— Costs of Contempt (under Sir Edward Sugden's Act) . . . . .	..	..	133	2	5
— Compensation to the late Officers of the Court of Exchequer . . . . .	..	..	9,230	10	0
— Expenses of Courts, Registrars' office, Masters' offices, Report and other offices, for repairs, rates, stationery, coals, candles, servants' wages, &c. . . . .	..	..	3,410	5	6
Surplus Interest invested . . . . .	..	..	10,000	0	0
			£ 85,494	0	2

RECEIPTS.			CASH.			STOCK.		
	£	s. d.	£	s.	d.	£	s.	d.
Balance on the Account, 1 October 1843 . . . . .	11,320	3 6	2,895,019	18	2			
Stock purchased with surplus interest . . . . .	..	..				10,471	4	1
Stock purchased with Suitors' general cash . . . . .	..	..				302,159	11	2
Dividends received during the year . . . . .	85,927	4 11						
Received of the Accountant-General, under the 5 Vict. c. 5, s. 61 . . . . .	150	0 0						
			97,297	8 5	3,207,650	13	5	
Payments . . . . .	85,494	0 2						
BALANCE on the Account, 1 October 1844 . . . . .	£ 11,803	8	3,207,650	13	5			

## NEW BILLS IN PARLIAMENT.

## BAIL IN ERROR ON MISDEMEANORS.

The following is the Lord Chancellor's bill to stay execution of judgment for misdemeanors upon giving bail in error.

1. That in every case of judgment for a misdemeanor where the defendant or defendants shall have obtained a writ of error to reverse such judgment, execution thereupon shall be stayed, or in case execution shall have issued, all further proceedings upon such execution shall be suspended, until such writ of error shall be finally determined; and in case the defendant or defendants shall be imprisoned under such execution, or any fine shall have been levied, either in whole or in part, in pursuance of such judgment, the said defendant or defendants shall be entitled to be released from imprisonment, and to receive back any money levied on account of such fine, until such final determination as aforesaid: Provided always, that no execution upon any such judgment shall be stayed or suspended unless and until the defendant or defendants shall become bound by recognizance, to be acknowledged either in the same court in which the judgment shall have been given, or before any one of the judges of her Majesty's Superior Courts, with two sufficient sureties, to be approved of by such court or judge, in such sum as such court or judge shall direct, to prosecute the writ of error with effect, and in case the judgment shall be affirmed, to pay the amount of any fine which may have been imposed on the said defendant or defendants by the said judgment, and to render the said defendant or defendants to prison, according to the said judgment, where imprisonment shall have been adjudged.

2. That where judgment upon such writ of error shall be affirmed, and imprisonment shall have been adjudged, the period for its continuance in pursuance of such judgment, if such imprisonment shall not have commenced under such execution, shall be reckoned to begin from the day when such defendant or defendants shall be in actual custody under such judgment; and if the defendant or defendants shall have been released from imprisonment in manner hereinbefore provided, such defendant or defendants shall be liable to be imprisoned for such further period as, with the time during which such defendant or defendants may already have been imprisoned under such execution, shall be equal to the period for which such defendant or defendants was or were so adjudged to be imprisoned as aforesaid.

3. That if the court in which any such writ of error shall be pending shall upon motion in that behalf decide that the defendant or defendants by whom it shall be brought has or have wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such court to order the writ of error to be quashed, and thereupon the defendant or defendants

who brought such writ of error shall be liable to execution upon the judgment; and if the defendant or defendants be not forthwith rendered as aforesaid to the custody of the proper officer, the recognizance shall be forfeited in the same manner as if the judgment had been affirmed.

## PRIVILEGED PLACES AS TO ARREST.

MR. EDITOR,—Perceiving in your number for the 18th of January, a letter from a correspondent, giving an account of a caption made within the precincts of Windsor Castle, (a privileged place,) by leave of the Lord Steward, I beg to give the following account of a similar circumstance, which may prove acceptable to your readers:—

A client having obtained a judgment for a large sum against a gentleman holding a situation and resident in the Tower of London, (one of the places in which a person is privileged from arrest,) negotiations for settlement of the debt by composition were for some time pending, but the terms offered by the opposite party not being agreed to by my client, he instructed me to enforce the judgment.

Accordingly, I made inquiries as to the practice, and not being able to get much information, I went to the Tower and had an interview with Major Elington, the Governor, on the subject, who, after expressing his hope that I should not have to proceed to extremities, requested me, (in the event of my being obliged to take the party in execution,) to write to him for liberty so to do, which I did, and received the following reply:—

"Major Elington presents his compliments to Mr. E. A—, and in reply to his letter of the 18th inst. begs to inform him that the privileges of the Tower are not available to any person so as to enable him to avoid the payment of his legal debts.

"Tower of London, Jan. 17th, 1843."

However, I had no occasion to carry the matter so far as your correspondent H., for the defendant getting scent of what was going on, came forward and settled the debt in accordance with my client's wishes.

A.

## MEMOIR OF MR. THOMAS HAMILTON.

WE record with much regret the death of Thomas Hamilton, Esq., of the firm of Few, Hamilton, & Few, which took place at his residence in the Mall, Hammersmith, on Sunday evening, the 2nd February, in the 57th year of his age.

Mr. Hamilton was a highly respected member of the profession, and had been actively engaged before the public for a period of more than thirty years, with great credit to himself, and satisfaction to his clients; and we think it

right to give a short history of his professional career.

Mr. Hamilton was the son of a respectable clergyman in Yorkshire, by whom he was principally educated till after he had attained his sixteenth year: and, for his years, his classical acquirements at that time were of no ordinary character. He was then articled by his father to Messrs. Upton & Co., an eminent firm in Leeds, with whom he served his clerkship; and acquired during that period a considerable knowledge of the Law of Real Property, as well as of commercial transactions. His clerkship having expired, he quitted Leeds, and went as an assistant to the office of Messrs. Few and Ashmore, who had a short time previously succeeded to the business of Mr. Townley Ward, and during the two years he remained their assistant he became so valuable to the firm, that they offered him a partnership, which he readily accepted.

From that time to the present he has been most actively engaged in his professional capacity, and few men have sustained a higher reputation than Mr. Hamilton during his long and active career. He was friendly and unostentatious in his manners; he possessed a noble and generous disposition; and performed unbounded acts of kindness and liberality to the widows and orphans of his poorer brethren.

He was a member of the Incorporated Law Society, and his name appears on the provisional committee in 1825, prior to the regular formation of the institution, and, had he been willing, he might have been a member of the committee of management. He was a constant attendant at the general meetings of the society, and being a ready speaker, generally distinguished himself by some good-humoured sarcasms on the grievances of the profession.

For the last six months his health had been giving way by a pulmonary complaint, and he clearly foresaw that his earthly career was drawing to a close. He met his approaching fate with a quietude of manner perfectly consistent with his general character, and bowed in reverence to the Will of that Divine Being who had given him so many years both of prosperity and enjoyment.

He has left a widow, but no family, to lament his loss.

## SELECTIONS FROM CORRESPONDENCE.

### DEFECTS IN THE LAW.

A solicitor, within twenty miles of London, contracts debts to nearly 20,000*l.*, and keeps out of the way to avoid being taken in execution, and continues in possession of almost all his property, setting his creditors at defiance. Surely the Bankrupt Law should be amended to meet such a case. I abstain from giving names, but I may add that every attempt has been made to bring him within the Bankrupt Laws, under a fiat issued, but without effect.

In another case, a large landed proprietor of estates heavily mortgaged in like manner keeps out of the way to avoid a caption, but although he has been deeply engaged in various speculations, he cannot be met with, and his creditors are without their money. He will not claim protection or seek the benefit of the Act for the Relief of Insolvent Debtors; but if a bankruptcy could reach him the creditors would be greatly benefited.

CIVIS.

### MANCHESTER LAW ASSOCIATION.

SIR,—The sixth annual report of this association, published in your journal for 1st February, indicates to my mind pretty clearly, that this society, as well as others of identical character, howsoever useful they may be, and however estimable their intentions, are nevertheless in some of their details objectionable. The Lord Chancellor's bill for *simplifying* the transfer of real property, appears to have been supported by the petition and approbation of the above association, this of itself shows that the Manchester lawyers took but a very superficial view of the effect to be produced by his lordship's measure, or they were guilty of a greater error, if indeed they maturely considered the consequences that measure has entailed upon the profession, and through it the public at large; or lastly, the Manchester Association have been imposed upon. In either view of the matter, this association proves that it is not intitled to the meed of praise which has been accorded to it, for most assuredly of all the acts of last session, omitting the vexatious and devastating act for the abolition of arrest for debts under 20*l.*, the Lord Chancellor's Transfer Act stands conspicuously prominent, and the calls for its immediate and utter annihilation are loud and deep; the whole body of conveyancers are up in arms against it; a more mischievous act, as it is agreed by common assent, was never placed on the statute roll of Great Britain.

I expect better things however from these societies in general, and from the Manchester Association in particular, for I am well acquainted with the Lancaster lawyers, and they are, as a body, better informed upon legal topics than any other class of men in the country, the London attorneys of course excepted.

T. W. H.

### LAW PROMOTIONS.

#### PATENTS OF PRECEDENCE.

Mr. Serjeant Manning,  
Mr. Serjeant Channell.

#### NEW QUEEN'S COUNSEL.

Abraham Hayward, Esq., of the Western Circuit, called to the bar, by the Inner Temple, 15th June, 1832.

Mr. Hayward was sworn in on Saturday last, with the other common law members of the bar named in our last number.

We regret to state that Mr. Montagu Chambers is not in the list of new Queen's Counsel, as stated last week. We believe he is well entitled to the distinction, and will no doubt soon receive it.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

MORTGAGOR AND MORTGAGEE.—ALTERATIONS OF MORTGAGED PROPERTY.—DECREE FOR REDEMPTION.—ACCOUNT.

*A mortgagee in possession laid out money on alterations of the mortgaged property, without consent of the mortgagor, such alterations not being necessary repairs. Held, on a decree for redemption, that the mortgagee was not entitled to an inquiry as to the costs of the alterations, as the evidence showed the property was deteriorated by them, and therefore held further, that the mortgagee should account for the damage so done and pay the costs of the suit, which his conduct had made necessary.*

THE plaintiff mortgaged a house and cottages and premises, in 1830, to the defendant, who was his solicitor, for 440*l.*, part of which consisted of costs and charges. The interest being in arrear in 1838, the defendant brought an action of ejectment, and thereby got into possession of the mortgaged premises, and took down two of the cottages and built a stable in place of them, and laid out money on the alterations, without consulting the plaintiff, or having any consent from him. In 1839 the plaintiff gave notice of his intention to redeem, and asked for an account, which defendant neglected to furnish. The plaintiff filed a bill to redeem, in 1840, and the cause coming to be heard before the Master of the Rolls, in March 1843, his lordship decreed for a redemption, and refused to allow an inquiry as to the costs of the alterations, which appeared by the plaintiff's evidence—the defendant did not produce any—not to be necessary repairs for sustenance of the property, nor improvements of it, but rather tending to its depreciation. His lordship therefore further held, that the plaintiff was entitled to an inquiry as to the loss sustained in consequence of the alterations, and also that the defendant should pay the costs of the suit.

The defendant appealed from the decree.

Mr. Romilly and Mr. Stevens for the appellant; Mr. Russell and Mr. Chandless for the

respondent. *Miller v. Beatty*<sup>a</sup> and *Wragg v. Denham*<sup>b</sup> were cited, among other cases.

The Lord Chancellor.—This bill was filed by the mortgagor for the redemption of a public-house and several cottages, which had been mortgaged to the defendant in 1830 for 300*l.* Afterwards, in 1836, there was a further charge for a further advance, including a bill of costs. Subsequently, the defendant brought an ejectment and obtained possession of the premises. He then pulled down two of the cottages and applied the materials upon property of his own, and built a stable upon the site of the two cottages. This was done without the consent of the mortgagor being had; and I am of opinion that the defendant had no right to pull down the cottages, for it appears that they were not in such a state as to require to be pulled down. One of the witnesses examined for the plaintiff was tenant of one of the cottages, and he said they might have been repaired for ten pounds: he was a bricklayer, and therefore a person of skill in the value of the cottages. Both the tenants of the cottages stated that they would have continued to occupy them, if they had been permitted, at the rent they had been paying to the plaintiff. Several surveyors also were examined by the plaintiff, and some of them said that the property in its present state would not let for so much as it would have let for before the alterations made by the defendant. In this state of things, the defendant committed an act of wrongful waste by pulling down the two cottages and taking away the materials, and by building a stable in their place; and I am of opinion that he is chargeable with whatever loss the plaintiff has sustained in consequence of that wrongful act. The Master of the Rolls' decision was to this effect: he made the mortgagee chargeable with so much rent as the cottages would have let for, had they not been pulled down, and he held him liable to pay the six pounds a-year for which the stable had been let. This was not unfair; for the defendant had so far permanently diminished the value of the property. The defendant's counsel say, that as the mortgagee had built the stable, he ought to be allowed to deduct so much rent as it has produced from the sum he is to be charged with in respect of the cottages. But I do not accede to that argument, for the pulling down the cottages was a wrongful act. As the decree stood, the mortgagor had an allowance of six years' rent, which if he had remained in possession he would have continued to have received for the future, besides the materials which had been taken off the premises. I am satisfied the mortgagee had not been made to pay so much as he might have been charged with, and that it ought not to be referred to the Master to take an account of what has been laid out by him. It was said that the sum which had been expended in lasting repairs and improvements entered into

<sup>a</sup> Seton on Decrees, 153.

<sup>b</sup> 2 You. & C. 117.

the loss sustained by the mortgagor ; that the mortgagee had employed workmen in effecting necessary repairs; and that in pulling down the cottages he put something else in their stead. But taking the whole together, the mortgagee cannot demand a reference to the Master to inquire how much of the sum which he has expended has been for necessary and proper repairs, and how much in respect of his wrongful act, if upon the whole taken together there has been a diminution in the value of the property by reason of his alterations. The fact of diminution of value appears upon the evidence in the cause, and the defendant is therefore not entitled to any reference. Then as to the costs of the suit; the defendant refused to account, when called upon, and therefore the bill became necessary. If the bill became necessary by the defendant's misconduct, the opinion of the Master of the Rolls was right upon that point. The decree must be affirmed, with costs.

*Sandon v. Hooper.* At Westminster, Dec. 9, 14, & 17, 1844.

#### Rolls Court.

[Reported by E. VANSITTART NEALE, Esq., Barrister at Law.]

PRACTICE. — 1ST WILL. IV. c. 36. — APPOINTMENT OF SOLICITOR.

*An application that a defendant may be brought to the bar of the court for the purpose of having a solicitor appointed to put in his answer, is irregular. The proper application is, that the defendant may be brought up for the purpose of taking the bill pro confesso, when it will lie on him to make application for the appointment of a solicitor.*

THIS was a motion for a *habeas corpus* to bring up a defendant, in custody for contempt in not answering, and whom the Master had reported too poor to put in his answer, to the bar of the court, that he might apply to the court to appoint a solicitor for him, it having been held in a former case that the plaintiff could not make the application for the appointment of a solicitor for the defendant.

Mr. Lloyd for the petition.

Lord Langdale expressed his opinion that the order could not be made in the form asked. The application on the part of the plaintiff should be, that the defendant might be brought up for the purpose of the bill being taken *pro confesso*, when it would be in his power to apply to the court, if he chose, to appoint a solicitor for him. The order was accordingly drawn up in this form. Mr. Lloyd, however, at the suggestion of the Master of the Rolls, expressing the intention of the plaintiffs to induce the prisoner, if they could, to apply for the appointment of a solicitor without being brought up.

*Barton v. Mills*, January 23.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

PRACTICE.—PRODUCTION OF DOCUMENTS.

*It is not a sufficient answer to a motion for the production of documents, admitted by a defendant to be in his possession, that the title of the plaintiff is denied.*

*In order to dispense with the usual order for producing and depositing documents at the Office of the Clerk of Records in London, and to obtain permission that they shall be inspected at the place of business of the defendant in the country; it must not only appear upon affidavit that they are wanted in the country, but that they are in constant use there.*

THE bill in this case was filed for restraining the alleged infringement of a patent, and on a motion for an injunction, the court had directed an issue. The defendant had put in an answer, by which he expressly denied the plaintiff's title, but admitted that he had certain books and documents in his possession relating to the matter in question.

Mr. Stinton, in support of the motion, said, that the defendant having admitted possession of the books and documents, he was entitled to the order as a matter of course.

Mr. Phillips, contra, urged that as the plaintiff's title was expressly denied, there was no foundation for the motion; and that if the bill had been simply a bill of discovery, the denial of title would have been a sufficient answer to it.

The Vice-Chancellor said, the production of the books and documents required, might materially assist in making out the plaintiff's title, and he considered him intitled to an inspection of them.

Mr. Phillips then asked, that the order might be drawn up for the inspection of them at Leeds, where the defendant resided, as the defendant required the use of them for the purpose of his business.

The Vice-Chancellor said, that to entitle the defendant to this variation from the common order, an affidavit must be produced, not only stating that they were wanted at Leeds, but that they were in daily use there.

*Allen v. Rawson.* Jan. 31st 1845.

#### Vice-Chancellor of England.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

CONSTRUCTION. — SEPARATE ESTATE. — RESTRAINT OF ANTICIPATION. — PRACTICE.—BREACH OF TRUST.

*A clause in a marriage settlement directed the interest and dividends to be paid: "into the proper hands of the wife, or to such person or persons, as she should by note or writing, under her hand, from time to time appoint, but not so as to dispose thereof, or deprive*



*herself of the benefit thereof, in the way of anticipation;" but, the receipt clause contained no negative words: Held, notwithstanding the omission of such words, that the clause operated as an effectual restraint upon anticipation.*

*Where it is sought to charge a trustee with breach of trust, the court will, in general, reserve its declaration until further directions, when the actual amount of deficiency, if any, has been ascertained.*

UPON the marriage of Mr. and Mrs. Vawdrey, in March 1832, a settlement was executed by which certain legacies, and a share in the estate of the lady's father, the whole of which, under his will, were to become vested in her, upon her attaining 21, or on marriage, whichever should first happen,—were assigned to trustees upon trust, that the trustees or survivor of them, or the executors and administrators of such survivor, should, from and immediately after the marriage, and as soon, and from time to time, as the share, legacies, or bequests, or other sum or sums of money, interest, and effects therein-mentioned, should become payable, collect, get in, and receive the same, and should lay out and invest in their or his names or name, the money to arise and be received therefrom in the purchase of a share or shares in the parliamentary stocks or funds of Great Britain, or at interest upon government or real securities, and should stand and be possessed of, and interested in the said several monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon trust to pay the interest, dividends, and annual produce of the said several trust moneys, stocks, funds, and securities, into the proper hands of Eliza Vawdrey, or to such person or persons as she should, by any note or writing under her hand, from time to time appoint to receive the same during her life, but not so as during the joint lives of herself and John Collier Vawdrey, her then intended husband, to dispose thereof or deprive herself of the benefit thereof by mortgage, charge, sale, assignment, or otherwise in the way of anticipation, to the intent, that the same might be for the sole and separate use of the said Eliza Vawdrey, and not subject to the debts, control, disposition or engagements of the said John Collier Vawdrey, or any other person with whom she might, after his decease, happen to intermarry; and it was thereby agreed and declared that the receipt or receipts of the said Eliza Vawdrey, or of such person or persons as she might appoint to receive the same, and his, her, or their receipt or receipts might be a good and sufficient discharge to the persons or person paying the same, for so much thereof, as in such receipts or receipt should be acknowledged to be received; and from and after the decease of the said Eliza Vawdrey, the property was given over. A bill was filed by Eliza Vawdrey, seeking to charge the trustees and executors personally with a breach of trust, in reference to the property settled upon her in the manner above mentioned. Upon the

argument two questions were raised, namely, 1st, Whether under the above clause in the settlement, Eliza Vawdrey's power of anticipation was restrained; and 2ndly, Whether the court would immediately declare the trustees liable, in the event of a deficiency, or wait until the fact, and if any, the amount, of the deficiency was ascertained?

Mr. Koe, Mr. Parker, Mr. Romilly, Mr. Smythe, Mr. Bacon, Mr. Bagshawe, Mr. Greene, and Mr. Palmer, argued the case for the respective parties, and cited the following cases:—*Barrymore v. Ellis*, 8 Sim. 1; *Brown v. Bamford*, 11 Sim. 127; *Moore v. Moore* 1 Coll. 54; *Baggett v. Meux*, 1 Coll. 138; *Medley v. Horton*, 6 Jur. 853.

Jan. 29.—His Honour having taken time to consider the case, now delivered his judgment as follows:—Two points were argued in this case, upon which I did not, at the close of the argument, express any final opinion. The first was this, namely, whether according to the true construction of the settlement made upon the marriage of Mr. and Mrs. Vawdrey, the latter had the power of affecting by anticipation the income, or any part of it, which had been settled to her separate use. The words of the settlement, so far as they relate to this question, are as follows:—(His Honour read the clause of the settlement.) Now the construction of the first part of the above clause, namely, that which precedes the receipt clause, I am of opinion, must be, that it operates as a restraint against anticipation. If it be imperatively necessary that negative words should be used to restrain anticipation, (upon which I give no opinion,) I think these words are sufficiently used in that member of the clause which I am now considering. The only question will be, whether the effect of that member of the sentence is destroyed by the absence of negative words in the receipt clause which follows it. I am of opinion that the words of the receipt clause have no such effect. Upon every principle of construction, the receipt clause, in a case like this, must have reference to the antecedent part of the entire settlement. The first part gives the income to the lady, payable to her or her appointee, in such a manner that she has not the power to anticipate it; the second enables her, or her appointee, to give receipts for it. I cannot read the receipt clause as displacing the restraint which the words of the former part of the clause imposed. The purpose expressed by it is one, to give effect to which, the law requires no technical language. This case is plainly distinguishable from those to which I was referred in the argument.

Upon the other point, the question was, whether I should at once declare the trustees liable for any deficiency there might be in the fund, to make good the trust property, or wait until it was seen, if, upon the sale, there would be a deficiency? There appears to be no absolute rule upon the subject. The court may, in some cases, charge a trustee with a breach of trust, leaving him to make what he can, if the trust property has not been duly got in.

Where that course is not pursued, the usual course is, not to speculate at the hearing, whether a loss will be ultimately sustained by the non-observance of the letter of the trust, but to realise the security, and charge the trustee with the deficiency, if any, upon further directions. I could proceed to declare the liability of the trustee at once, but no reason has been suggested in this case, why I should do so, that would not apply in every suit in which a similar question arises. I think I ought not to make the declaration now. I do it partly upon the ground, that probably it will make no difference in the end,—that there is no object really gained in the suit by such a declaration, and that it leads to a great deal of useless discussion when parties wish to get a declaration, which may just as well be obtained upon further directions.

*Harrop v. Hayward.* H. T., 1845.

**Queen's Bench.**

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

**PRACTICE.**

*When the plaintiff in an action applies to a judge at chambers to amend the record, and the judge makes an order to that effect, at the same time directing the costs of the application to be paid by the plaintiff to the defendant; Held, that the defendant after the receipt of those costs is not in a situation to apply to the court to set aside the judge's order, on the ground that he had no authority to make such order.*

Mr. Pashley obtained a rule nisi, to set aside an order made by Mr. Justice Wightman, allowing the plaintiff in this case to amend the record. The learned judge made the order, that the amendment should be made on payment of the costs of the application by the plaintiff to the defendant. These costs had been ascertained and paid to the defendant before the present rule had been moved for.

Mr. Watson showed cause, and contended that it was not competent for the defendant to make the present application. The defendant has by his own conduct precluded himself from objecting to the order made by the learned judge. After the defendant has acted under the judges order and received the costs, he cannot come forward and dispute the power of the judge to make the order. In *Kennard v. Harris*,<sup>a</sup> it was held in the case of awards that a party after receiving the costs of reference and award, which, by the terms of a rule of reference, were to be paid by the other party, cannot move to set aside the award. The court said: "The plaintiff, after accepting the costs of the reference and award, is precluded from moving to set it aside. If no award had been

made no costs would have been due; by accepting the costs of the award he admits the award to be valid, and cannot now say that it is bad." The same principle applies in the present case, and the defendant by accepting the costs of the application is precluded from disputing the validity of the judge's order.

Mr. Pashley, *contra*. There is no doubt the defendant has received these costs, but he is not for that reason precluded from disputing the authority of the judge to make the order. If a person is called upon to resist an improper application, he is in any way entitled to his costs; and he is not the less entitled to his costs because the judge makes an order, which in point of law he was not authorised to make. The defendant therefore has a right to bring under the consideration of the court the validity of the order which has been made by the learned judge.

Lord Denman, C. J. The defendant is not in a situation to dispute the validity of the order made by the learned judge. He gets the costs of the order and then draws up the rule. The receipt of the costs under such circumstances must operate as a personal disability on the part of the defendant.

*Patteson, Coleridge, and Wightman, Js., concurred.*

Rule discharged with costs.

**Queen's Bench Practice Court.**

[Reported by E. H. WOOLEYTON, Esq., Barrister at Law.]

STAT. 17 GEO. 3, C. 56.—ENTRY OF APPEAL.

—COSTS.—ESTREATING RECOGNIZANCES.

—COMMITMENT IN EXECUTION.

*The 17 Geo. 3, c. 56, s. 20, requiring justices, upon proof of notice of appeal against a conviction, to hear and determine the matter of the appeal, and to award costs to either party in their discretion, does not empower the quarter sessions to enter and hear an appeal on the application of the prosecutor, notwithstanding the party convicted has failed to appear and enter his appeal after having given notice of appeal and entered into recognizances.*

*The quarter sessions cannot in such a case award costs to the prosecutor.*

*The only remedy for such costs is an application to estreat the recognizances.*

*Semble, that under such circumstances it is competent to the convicting magistrates to commit the defendant to prison in execution of the original sentence.*

Cowling had obtained a rule for a mandamus commanding the Recorder of Bolton to hear and determine an appeal against the conviction of William Barlow, or to affirm such conviction, or to award reasonable costs to be paid by the defendant. The conviction was under the 8th section of the 17 Geo. 3, c. 56,

an act relating to frauds and abuses by persons employed in the woollen, cotton, and other manufactures. The affidavits stated that the defendant was convicted on the 15th July, and sentenced to one month's imprisonment; that he gave notice of appeal, and on entering into a recognizance with sureties, was discharged. On the 22nd October, two days before the sessions, he served the prosecutor with notice of abandonment, three clear days' notice of the abandonment of an appeal being required by the practice of the sessions. The prosecutor applied at the sessions to have the appeal entered and the conviction confirmed, in order to obtain costs. The application being opposed, the Recorder was of opinion that he had no power to grant it, and refused to enter the appeal.

The 20th section of the act provides, that if any person shall think himself aggrieved by the order or judgment, &c., he may appeal to the next general or general quarter sessions, giving notice in writing at the time of the conviction to the justices, and at the same time entering into a recognizance, with sufficient sureties, conditioned to try the appeal, abide the judgment of sessions, and pay such costs as shall be then awarded, &c.; and the justices at such sessions are hereby authorized and required, upon due proof of such notice of appeal, &c., to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party, &c.

*Baines* (on behalf the Recorder) showed cause.—The Recorder had no power to enter this appeal. The sessions cannot give themselves jurisdiction by any rule of practice they may adopt. The right of appeal is personal to the appellant. The prosecutor had an obvious remedy for his costs. He might have applied to the quarter sessions to estreat the recognizances, and the original judgment might have been enforced. *R. v. Justices of the West Riding*,<sup>a</sup> *Haynes v. Hayton*.<sup>b</sup> [*Patteson, J.*—The difficulty is in *R. v. Twyford*,<sup>c</sup> where a party having been convicted by two justices under the 17 Geo. 3, c. 56, and sentenced to eleven weeks' imprisonment, and given notice of appeal, was committed for not having entered into the recognizance, and not having entered the appeal, the sessions discharged him; and the court, inclining to the opinion that the convicting magistrate had no longer power to commit in execution of the conviction, refused a mandamus to compel them.] That case presents no difficulty. The defendant there had been imprisoned in default of sureties, and a part of the sentence had been suffered, and it was therefore held that the convicting justices could no longer act upon their conviction. But the appeal having been entered here, the notice of appeal became nugatory, and the parties may issue their warrant and commit in execution of the original sen-

tence. The respondent has no right to enter an appeal. *R. v. Justices West Riding*.<sup>d</sup> [*Patteson, J.*—It is not put on the ground of a general power in the respondent to enter an appeal, but on the language of this section of the act.] Similar words occur in the 49 Geo. 3, c. 68, s. 5, the earlier act regulating proceedings on orders in bastardy, and in the 4th clause of the 17 Geo. 2, c. 38, as to appeals against poor's rates, and it was never attempted to put such a construction upon them. The respondent cannot enter an appeal even for the purpose of obtaining costs. *R. v. Justices Essex*.<sup>e</sup> If the construction contended for could be sustained the recognizance would be unnecessary, but on the entry of the appeal there would arise an original jurisdiction in the justices, which is not contended. The power of giving costs is auxiliary to that of hearing and determining the appeal. In order that costs should be awarded under the 8 & 9 W. 3, c. 30, s. 30, an appeal must have been entered. *R. v. Stoke Bliss*.<sup>f</sup> The 17 Geo. 3, c. 56, is repealed, so far as relates to woollen, cotton, and other manufactures, by the 6 & 7 Vict. c. 40, and the 7th section of the latter act introduces new provisions as to offences relating to them. An appeal is only given when the imprisonment exceeds one calendar month. It does not appear on the face of the conviction under which act the conviction is framed.

*Cowling*, contra.—The application to the Recorder was to hear and determine the appeal, and the act empowers him to grant it. If the entry of the appeal is necessary to enable him to do so, it was his duty to direct such entry to be made. The words in the section in question are not as the ordinary appeal clauses to hear and determine "the appeal," but "the matter of the appeal." The 22nd section enacts that the conviction shall be returned to the sessions, and in case of appeal the justices are required, upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determining of the matter of the said appeal, according to the direction of the 22 Geo. 2, c. 27, which is in *pari materid*; and the meaning of the two acts taken together is, that as soon as the formalities prescribed are complied with, the case is with the quarter sessions, who are empowered to act in it, whether the party proceeds with his appeal or not. In *R. v. Twyford*, the judges *concur* in saying, that as soon as the recognizance is entered into, the convicting magistrate has no further power. The remedy of estreating the recognizance is utterly illusory. The object of the recognizance is merely to secure the costs; so far it is effectual; but for the purposes of punishment, it is nugatory. 2ndly. The application must be granted so far as it relates to the costs. It was admitted in *R. v. Stoke Bliss* that if the order had been regular, costs might

<sup>a</sup> 7 Ad. & Ell. 583.<sup>b</sup> 7 B. & C. 293.<sup>c</sup> 5 Ad. & Ell. 430.<sup>d</sup> 3 Gale & Davison, 170, 12 L. J., N. S., M. C. 148.<sup>e</sup> 8 T. R. 583.<sup>f</sup> 1 Dav. & Merivale, 135.

have been granted. The application for costs here was not ancillary to that for the order, but distinct, and should have been granted notwithstanding the notice of abandonment, which having been given too late, was utterly inoperative. The Act. 6 & 7 Vict. c. 40, was not referred to at all; and it is sufficient for us to show that there is an act in existence which authorises the form of conviction which has been adopted.

*Cur. adv. vult.*

*Patteson, J.*, on a subsequent day delivered judgment. — After having recapitulated the facts and referred to the 20th section of the act of parliament, his lordship proceeded: This case differs from *R. v. Twyford*, which has been referred to, as there the party was in custody. It is said that by the language of the act the respondent had a right to enter the appeal, and that the Recorder was thereupon authorised to hear and determine it. We have said in one or two cases that the respondent has no such power where it is by the act given to the appellant, nor indeed is the general rule now controverted. But Mr. Cowling says that the Recorder here has such a power under this act, and in support of that argument relies upon the words, "are hereby authorised, upon due proof of notice of appeal, &c., to hear, &c." Now the same words are found in other acts, not indeed in the 17 Geo. 2, but in the 49 Geo. 3, c. 58, s. 5, and various others, and if it should be determined that they empower the justices to hear an appeal, though no appeal has been entered by the appellant, that construction would equally apply to those acts, and for this no authority can be found. It appears to me that the words in question only express a condition which is imposed upon the appellant, in order to render the matter properly cognizable by the sessions, and without which they are not at liberty to go into it. This appeal not having been so entered, the Recorder has no such power. It is however argued, that the remedy of estreating the recognizance is an inadequate one. That may possibly be; but the remedy at all events exists. It is further said that the original conviction cannot now be proceeded on. I think, however, that the omission to enter the appeal on the part of the appellant amounts to the same thing as if no recognizance had been entered into or notice of appeal given, in which case the magistrates might no doubt issue their warrant and commit the defendant, which I think they may do now. Even in *R. v. Twyford* the court did not say that the magistrates could not issue their warrant, but merely that they would not grant a mandamus to compel them to do so. It is next said that the writ ought to go as to so much as applies to costs. But the act of parliament obviously treats costs as ancillary to the hearing of the appeal, and no authority is given by it to award costs where an appeal has not been followed up. But the 8 & 9 W. 3, c. 30, was cited. On referring to it, however, I find that it does give such a power in cases to which it applies,

but that it is confined to cases of settlement. The case of *R. v. Stoke Bliss* was cited as an authority to show that costs might be granted, but that case is not applicable, and in it the court particularly guarded itself against deciding the question by reference to the affidavits, or otherwise than on the construction of the order itself. I mention this in order to obviate any misconception as to the extent to which that decision goes. The Recorder was therefore right in the opinion that he had no power to accede to the application; and the rule for the mandamus therefore must be discharged, and, as against the Recorder, with costs.

Rule discharged, with costs.

*Reg. v. Recorder of Bolton.* Q. B. P. C. M. T., 1844.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Hemp v. Garland*, 4 Q. B. 519.

STATUTE OF LIMITATIONS.—WARRANT OF ATTORNEY.

By the stat. 21 Jac. 1, c. 16, s. 3, it is enacted, that certain actions or suits therein mentioned, shall be brought within six years *next after the cause of such actions or suits*; and upon the construction of this section, it has been repeatedly held that the statute runs from the earliest time when a plaintiff *might* have brought his action, unless he were affected by any of the disabilities specified in the act. Thus, in the case of a bill of exchange dishonoured by non-acceptance, the Court of Exchequer decided, that the statute began to run from the date of the *non-acceptance*, and that an action brought within six years from the time of *non-payment*, but after the expiration of six years from the time of non-acceptance, was barred by the statute.\* A decision of a similar nature has been made by the Court of Q. B. in the above case, with respect to a warrant of attorney: and the point determined appears to us to be one of much practical importance. The warrant of attorney was made subject to a defeasance for the payment of a sum of 330*l.* by certain instalments of principal and interest: and the defeasance declared, that "in case default be made in payment of the said instalments or any or either of them, or the interest thereon, or any part thereof, the plaintiff should be at liberty to enter up judgment on the said warrant of attorney, and thereupon to issue execution for levying, recovering, and receiving all, or so much of (the original debt) and interest as should be unpaid at the time of such default, the same as if all the periods for payment thereof had expired by effluxion of time, together with the costs of such judgment, &c. Garland the debtor died, having paid five instalments; but at the time of his death

\* *Whitehead v. Walker*, 9 M. & W. 506.

several instalments were in arrear. The defendant was Garland's administrator, and an action of assumpsit for the arrears was commenced against him in March 1841, at which date, it was admitted that as to all the unpaid instalments, except the last three, which became payable in 1835, the action was barred by the statute: and as to these last three, the learned judge at *nisi prius*, held that the action was also too late, by reason of the right of action having accrued in respect of the whole of the unpaid instalments, at the time when default was made in payment of the first or earliest of the instalments then in arrear.

Lord Denman, J. C. "The declaration averred non-payment of several instalments, three of which appeared to be due within six years before the action brought, and some were due more than six years. The defendant pleaded the Statute of Limitations, upon which the present question arises:—the plaintiff contending that he has a right to recover in respect of the instalments due within six years, and the defendant contending that as *all* was to become payable upon the first default, the cause of action accrued at the time of such default, which was more than six years before the suit commenced. We are of opinion that the defendant is right, and that the cause of action accrued upon the first default for all that then remained owing of the whole debt. There was no other contract for forbearance or giving time, than that which is expressed in or to be implied from the terms of the warrant of attorney. The whole debt was due, and payment might have been enforced at the time it was given: but the warrant of attorney and the power it gave was a good consideration for the forbearance contracted for: and as long as the terms were performed, the plaintiff would be bound by it, and would have no cause of action against the intestate; but by the terms of that contract, which was the only valid consideration for the forbearance, the plaintiff was not obliged to give further time in case of a default, but might, if he pleased, upon non-payment of any instalment, proceed to recover all that remained due of the principal sum. In this case there was a default more than six years ago: and upon that the plaintiff might, if he pleased, have signed judgment and issued execution for all that remained due, or he might have maintained his action. If he chose to wait till all the instalments became due, no doubt he might do so: but that which was optional on the part of the plaintiff would not affect the right of the defendant, who might well consider the action as accruing from the time that the plaintiff had a right to maintain it."

*Doe v. Wiggins*, 4 Q. B. 367.

AGREEMENT.—LEASE.—STAMP.

In this case it appeared, that John Thompson had signed an agreement in the following words:—"I John Thompson do hereby agree with William Marlow, to retake of him two

acres of land in the Abbeygate, Leicester, from the 10th day of October 1840, at which time my tenancy thereof expires, until the 25th day March 1841, for the sum of 10*l*." Marlow did not sign the agreement. Before the expiration of the term mentioned in the agreement, Wiggins, the defendant, obtained possession under Thompson. Marlow having brought an ejectment against Wiggins, the foregoing agreement was produced in evidence at the trial, when an objection was taken to it for want of a stamp, and it was contended that the document, if it had any operation at all, was a lease, and ought to have been stamped accordingly. But the court held that the instrument was not a lease, because no person had signed it as lessor, and that the stamp duty applicable to leases was, therefore, not necessary. The court also held, that by the stat. 55 Geo. 3, c. 184, sched. Part I., tit. Agreements, the instrument in question was not liable to an agreement stamp, as "the matter thereof" was not of "the value of 20*l*. or upwards."

*Waithman v. Elsee*, 1 Carr. & K. 35. (*Nisi Prius*.)

STAMP.—EVIDENCE.

The defendant signed a paper in the following form:—"I. O. U. 85*l*., to be paid May 5." This being offered in evidence at the trial without a stamp, *Rolfe B.*, (the cause being undefended,) refused to allow it to be read. The plaintiff then gave other evidence of the debt, and obtained a verdict.

*Bird v. Bass*, 6 Man. & Grain. 143.

NOTICE OF ACT OF BANKRUPTCY MEANS KNOWLEDGE.

For the protection of persons dealing with those liable to the bankrupt laws, the stat. 2 & 3 Vict. c. 25, s. 1, enacts, that all contracts with a bankrupt, *bond fide* made before the date and issuing of the fiat against him, and all executions *bond fide* executed or levied before the date and signing of the fiat, shall be valid, notwithstanding a prior act of bankruptcy, provided the person dealing with such bankrupt, or at whose suit such execution issued, had not at the time of the contract, or of executing, or levying such execution, notice of any prior act of bankruptcy by him committed. In construing this act it has been holden, that *notice* in the act means *knowledge*. Thus, it has been said, that if a person were to see another commit an act of bankruptcy, though no one told him of it either by notice in writing or by verbal communication, still he would have notice within the meaning of the act. On the other hand, notice sent by letter, and delivered to a clerk, or left at the post-office, or indeed anything short of the actual reading, or being informed of its contents, will not amount to proof of notice within the act. But if a party wilfully abstain from opening a letter in order to prevent his having notice of an act of bank-

*Notice of act must be given or proved on facts*

ruptcy, it may reasonably be inferred, he knew, if he did open it, he should receive the intelligence it contained.

*Galton v. Emuss*, 1 Coll. 243.

VENDOR AND PURCHASER.—SPECIFIC PERFORMANCE.—AUCTION.

This is a remarkable case; in which the *Vice-Chancellor Knight Bruce* has pronounced a remarkable decision. Two persons, Galton and Nash, enter into the following contract. In the year 1838, an estate in Worcestershire belonging to one Williams, having been advertised for sale by public auction, they agreed between themselves that, "in consideration of Mr. Galton not opposing Mr. Nash in the purchase," Nash would not afterwards sell the estate to any one until he should first have given Galton the offer thereof, at the same price for which it might be knocked down to him by the auctioneer, together with all necessary expenses. The bargain went on to stipulate further, that Nash should not sell a certain farm, of which he was then owner, without giving Galton a similar privilege of pre-emption, "at the same price per acre as he may purchase Mr. Williams' for." Nash also engaging, "in case he purchased Mr. Williams' estate, that Mr. Galton, or his heir-at-law, shall, in any case, have the offer for twelve months of both the estates above mentioned upon the terms aforesaid, by the trustees under the will of the said John Nash, to whom he will give ample powers for the purpose." This was the contract which the court was called upon specifically to execute; a contract in our opinion but little deserving the favour of a court of equity; it being, in fact, nothing else than a clandestine conspiracy to deprive the unsuspecting vendor of the fair benefit of an open competition; that vendor being himself bound by the law which governs auctions, to the most strict and honourable exercise of candour, and fair dealing towards the public. At the sale, Nash, as was perhaps confidently expected, became the purchaser; Galton of course offering no opposition. On the 19th of March 1841, Nash died, having previously executed a will and codicil, whereby he devised both the estates in question to trustees, whom he appointed his executors; but to whom no powers of sale were given. He had never offered the estates to Galton; who, however, within the year stipulated by the contract, that is to say, on the 7th March 1842, gave notice to the trustees and the persons beneficially interested under the will, of his intention to purchase both the estates pursuant to the agreement. The trustees refused to sell without the direction of the court; whereupon Galton filed his bill, praying specific performance.

The argument for the plaintiff is not reported, but on behalf of the defendants sundry decisions were cited, to show that this was not a proper case for the court to interfere, by the exercise of its extraordinary jurisdiction—for

that the plaintiff had entered into the contract behind the back of the vendor, and after having kept it for years a secret, now came forward to enforce it against parties who were entirely ignorant of it. No precedent, however, precisely in point was adduced. At the close of the argument, the *Vice-Chancellor*, (having previously inquired whether the defendants wished to take a case for the opinion of a court of law as to the validity of the contract, which, however, they declined,) said:—"It is not suggested that the contract now sought to be enforced, involved any matter of fraud or misrepresentation. It was merely that one should not bid while the other was a competitor. No authority has been cited to show that such a contract is illegal; and as the defendants have not asked for an opportunity of bringing the question before a court of law, I assume that it is not their wish to do so. In the absence of authority to prove the contract illegal, and of any such application, I must hold the contract to be legal, and founded on valuable consideration; and I see no case of hardship to prevent it from being carried into effect by a court of equity." Specific performance was accordingly decreed.

Now, whether such a contract would have been considered valid at law or not, we must take the liberty of observing, that if this decision comes hereafter to be regarded as a precedent, it will give rise and encouragement to all manner of secret, juggling compacts between intending competitors at sales of land; and this more especially in rural districts, where parties likely to become purchasers are pretty well known before-hand. The consequence will be to defeat the very object of sales by auction, which the interests of public policy require, should be conducted with all imaginable fairness on both sides. Besides, many contracts are good at law, which a court of equity may not think it expedient to enforce by a decree for specific performance. And this, were it not for the decision here pronounced, we should have said, was peculiarly a case in which the parties might well have been left to their legal remedies.

*Page v. Adam*, 4 Beav. 269; *Forbes v. Peacock*, 12 Sim. 528.

TRUST.—APPLICATION OF PURCHASE MONEY.

These are conflicting decisions upon a question of infinite consequence. In *Page v. Adam*, the testator charged his whole estate with the payment of his debts, and also with the payment of certain annuities. Upon a sale by the executor, the purchaser of the estate demanded a release of the annuities, and filed his bill for specific performance. The answer admitted that the debts were then paid, but asserted that they were not paid at the date of the sale; so that the sale being for payment of debts, was contended to have been within the scope of the trust. Lord Langdale held that the purchaser was safe; and not bound to see to

the application of the purchase money. He held, moreover, and for the same reason, that he had no right to insist for a release from the annuitants. Such was the decision in *Page v. Adam*.

But in *Forbes v. Peacock* the Vice-Chancellor of England gave an opposite determination; and took occasion to comment on Lord Langdale's judgment in *Page v. Adam*, observing: "My notion is, that the law upon the point must be considered as unsettled; and my own personal opinion as a judge is, that the decision in *Page v. Adam* is contrary to the current of authority."

We must refer to these cases again. We are now only directing attention to the fact that a confliction of decision or of opinion exists upon a point which ought not to remain much longer unadjusted.

*Caney v. Bond*, 6 Beav. 486.

#### LIABILITY OF EXECUTOR. — MONEY LEFT ON PERSONAL SECURITY.

Executors ought not, without great reason, to permit money to remain upon personal security longer than is absolutely necessary. In illustration of this important practical maxim, some striking remarks fell from Lord Alvanley, M. R., in the case of *Powell v. Evans*, 5 Ves. 839, where it appeared that at the testator's death a sum of 300*l.* was out upon the bond of Charles Price as principal, and of one Roberts as surety. The executor did not call in the money, but permitted the securities to remain as he found them. The interest upon the bond was regularly paid by Price to the 5th of August, 1795. But in April 1796 he became bankrupt, and his estate yielded no dividend; while, on the other hand, the surety absconded. Notwithstanding this, the executor signed the bankrupt's certificate. The examination of the bankrupt showed that he had been in an embarrassed state for some time before his bankruptcy; but that during that time he had paid several debts for which he had been called upon; and he asserted that the 300*l.* in question might also, if demanded, have been paid. The defence of the executor, under these circumstances, consisted mainly of an allegation contained in his answer to the bill, that in a conversation with the testator he had made some objections to undertaking the office of executor, but that the testator, in reply, assured him that he would have nothing to do but to receive the interest of his money out upon securities.

In deciding the case, on the 24th March, 1801, the Master of the Rolls said: "The single question is, has the executor, by his conduct and neglect, made himself liable to make good to the estate this sum of money, as being lost through his default? It is a question of much importance, to which the court is bound to attend with great rigour; on the one hand, in order to protect persons who may

suffer by the executor's negligence; and on the other hand, with great tenderness to executors, who are often called upon to execute onerous and difficult trusts, and are entitled to indulgence, unless neglect is fully proved. No man who ever sat in this court is more averse than I am to charge executors, or more cautious not to hold them liable upon slight grounds, thereby deterring others from taking upon them such an office. But with all the allowance I am desirous of making to the present defendant, I think I should not do justice to the plaintiff, or the public, if I did not hold him guilty in this instance of very gross neglect; which, upon the principles on which these cases have been determined, must make him liable to repay to the plaintiff the loss incurred."

It is true that in this case of *Powell v. Evans*, the *cestui que trust* was an infant; but although that circumstance was adverted to in the judgment—it would rather appear that the result would have been the same in the case of an adult, for the principle of the decision rests evidently upon the necessity to which executors are wisely subjected by courts of equity to discover reasonable diligence, not only in collecting and getting in, but in placing on safe security the assets of the testator.

These observations will serve to introduce the above case of *Caney v. Bond*; where the testator had a year before his death placed with one Phillips, a sum of 500*l.* to be invested upon mortgage; the latter giving him his promissory note to secure the amount in the meantime. Of the testator's will, the defendant Bond and another, Jones, were the executors. And it appeared that Jones, as well as another person interested in the estate, urged Bond to get payment of the debt from Phillips, and invest the sum in the funds. This Bond positively refused to do. Soon afterwards Phillips became insolvent. The object of the bill was to compel Bond to make good the loss sustained by the estate. The Master of the Rolls, (Lord Langdale,) said: "If in any case an executor is to be charged, it is in a case of this sort, where he finds money not only standing on a security not sanctioned by the court, but where he has also been requested to call it in, and has refused. By his conduct he has taken upon himself the risk of the security; and he must therefore be charged with it, and with the costs down to the hearing."

#### BANKRUPTCY—DIVIDENDS DECLARED,

From Jan. 28th to Feb. 21st 1845, both inclusive, with dates when gazetted.

Alderson, J., Warley, Halifax, York, Worsted Spinner. Final div. 6s. 7d.  
Alderton, C. Div. 1s. 9d.  
Alexander, G., Beamister, Dorset, Iankeeper. Div. 3s. 4½d.  
Avery, J., 37, Mincing Lane, and of 5, Cumberland

- Place, Old Kent Road, Colonial Broker. Div. 4½d.
- Beaup, W., Newcastle upon-Tyne, Joiner and Builder. Final div. 4½d.
- Beesley, R., 46, Well Street, Oxford Street, Wine Cooper. Div. 1s.
- Bradshaw, J., and G. Williams, Marylebone Street, Piccadilly, Woollen Drapers. Div. 1½d.
- Brain, E., 33, Rodney Street, Pentonville, Steel and Copper-plate Printer. Div. 9½d.
- Brand, T. Div. 3½d.
- Bright, B., Wigmore Street, Victualler, Silvermith and Jeweller. Div. 2s. 6d.
- Buchanan, C. B., and W. Cunningham, Liverpool, Merchants. Div. 1s. 3½d.
- Caldecott, R. and J., Manchester, Silk Mercers, div. Final div. 4s. 8½d., (on separate estate of R. Caldecott. Final div. 2s. 5½d.)
- Cartledge, J., Browbridge, Halifax, York, Merchant and Cotton Spinner. Final div. 4s. 6d.
- Chamberlain, W., Peckham, Surrey, Linen Draper. Div. 1s. 9d.
- Chapman, R., Scorton, York. Final div. 3s.
- Condon, E., Milton Street, Dorset Square, Builder. Div. 5½d.
- Crambrook, J. Div. 4s. 4d.
- Craneis, R. J., Maldon, Essex, Butcher and Innkeeper. Div. 1s. 6d.
- Crespin, J. C., 31, East Cheap, Shipping Agent. Div. 6d.
- Crich, J., Sheffield, Malster. Div. 4s. 2d.
- Dickson, T., Thirsk, York, Linen Draper. Div. 5s.
- Dray, W. E. Div. 4s.
- Byre, T., Gainborough, Lincoln, Corn Merchant. Div. 4½d.
- Firth, J., Hleekmondwike, York, Merchant. Div. 3d.
- Gale, J. and J., Love Lane, Shadwell, Rope Makers. Div. 6d.
- Grantam, G., Manchester, Grocer. Div. 3s. 8d.
- Green, J., Great Winchester Street, Merchant. Div. 6½d.
- Goddard, S. A., and R. Hill, Birmingham, Merchants. Div. 4d.
- Goodeve, A., 53, Aldermanbury, Warehouseman. Div. 1s.
- Harraden, H. R., Cambridge, Printseller. Div. 5s.
- Hegginbottom, J., Ashton-under-Lyne, Lancaster, Money Scrivener. Div. 5s.
- Heron, F., South Blyth, Northumberland, Ship Owner and Butcher. Div. 9d.
- Heron, J., South Blyth, Northumberland, Ship Owner. Div. 9d.
- Hetherington, R., Ellen Grove, Cumberland, Tanner. Final div. 4s. 2½d.
- Holland, J., Buxted, Sussex, Grocer. Div. 2s.
- Hutchinson, G., J. Hutchinson, H. Hutchinson, and T. Place, Stockton-upon-Tees, Bankers. Final div. ½ of a penny.
- Jackson, W., Liverpool, Baker. Div. 1s. 2d.
- Jackson, J., (late of Partington, Holderness, York, now of Kingaton-upon-Hull,) Innkeeper. Div. 3d.
- Jardine, J., Richibucto, New Brunswick, and of Liverpool, Merchant. Div. 7½d.
- Johnson, T., C. Mann, and W. Johnson, Romford, Essex, Bankers. Div. 2s. 6d.
- Jones, H., Guildhall Street, Canterbury, Wine and Spirit Merchant. Div. 2½d.
- Leing, R., Mill Bridge, Birstall, York, Tallow Chandler. Div. 3s. 2d.
- Lark, J., Seymour Street, Euston Square, Boot Maker. Div. 3½d.
- Law, W., Reading, Berks, Draper. Div. 3s.
- Laycock, J., Colne, Lancaster, Tallow Chandler. Final div. 1s.
- Leaver, T., late of Great Coxwell, Berks, Baker. Div. 6s. 6d.
- Lees, Brassey, Farr and Lee, Lombard Street, Bankers. Div. 10s. 4d.
- Lock, J., Northampton, Tea Dealer. Final div. 2d.
- Mann, C., Romford, Essex, Banker. Final div. 20s.
- Mather, W. and C., and J. T. Newstead, Manchester, and of Salford, Ironfounders. Final div. 15s. 6½d.
- Metcalfe, J., Liverpool, Grocer. Div. 1s. 6d.
- Mitchell, R., Lime Street, Merchant. Div. 9d.
- Morgan, W., sen., 29, St. Swithin's Lane, Hard-wareman. Div. 3s. 4d.
- Murray, J., Liverpool, Millwright. Div. 12s. 11d.
- Newall, W., jun., and A. Harrison, Manchester, Grocers. Final div. 2½d.
- Oliver, W., Maidstone, Upholsterer. Div. 5d.
- O'Neil, C., R. Salkeld, and G. S. Digby, Brinder Iron Works, Glamorgan. Div. 2s. 6d.
- Orchard, G. B., Bath, Upholsterer. Final div. ½d.
- Parker, John, Manchester, Coach Builder. Final div. 10s.
- Petrie, J. C., Bedlington, Durham, Miller. Div. 1s. 2d.
- Pope, D. Div. 2s.
- Part, G., Upper Thames Street, Ale and Porter Merchant. Div. 1s. 4d.
- Row, J., Torrington, Devon, Chemist. Div. 2s. 2d.
- Russell, R., Bradford, York, Provision Merchant. Final div. 3s. 4½d.
- Saunders, J., J. Fanner, and T. H. Saunders, Basinghall Street, and of Bradford, Wilts, Woollen Manufacturers, div. 1½d., (on separate estate of T. H. Saunders, div. 9½d.)
- Shepherd, A. and J., Huddersfield, Merchants. Final div. 2½d.
- Sly, S., Bouverie Street, Fleet Street, and of Corn-wall Road, Lambeth, Engraver. Final div. 3½d.
- Smith, J., and H. Titford, 10, King Street, Snow Hill, Engravers. Div. 4½d., (on separate estate of H. Titford, div. 2s. 4d.)
- Sharman, F., Barge Yard, Bucklersbury, Shoe Factor. Div. 2½d.
- Sorby, J., Sheffield, Steel Manufacturer. Div. 1d.
- Southey, Simon. Div. 10s.
- Sporer, J. F. Div. 20s., (on separate estate of Sporer and Miley, div. 6s.)
- Stein, J., T. Smith, R. and J. Stein, and R. Smith, Fenchurch Street, Merchants. Div. 6d.
- Taylor, W., Springhead, Saddleworth, York, Wool and Oil Merchant. Div. 2s. 9½d.
- Thompson, M., Saffron Walden, Essex, Ironmonger. Div. 7s. 3½d.
- Tristram, J., Two Mill Houses, Basford, Notts, Beer Housekeeper. Div. 13s. 4d.
- White, J. C., and G. H. White, Bath, Music Sellers. Div. 6s.
- Whitmarsh, T. H., late of the Green Man Hotel, Blackheath, now of George Street, Hanover Square, Hotel Keeper. Div. 3s.
- Wigney, J. N., and C. Wigney, Brighton, Sussex, Bankers, (div. on separate estate of C. Wigney, 5s. 3d., on separate estate of J. N. Wigney, div. 4s. 3d.) firm div. 1s. 2d.
- Williams, H., Farringdon, Berks, Grocer. Div. 1s. 3d.
- Williams, R., St. Mary-le-Port, Street, Bristol, Buttermen. Div. 5s. 6d.



Williamson, C., 17, Regent Street, Glover. Div. 1½d.  
 Woollam, J., St. Albans, Herts, Silk Throwster. Div. 1s.  
 Younghusband, R., late of Hewlett Street, and Naunton, Cheltenham, Brick Maker. Div. 3d.  
 Yuill, W., 74, Cornhill, Tailor. Div. 8s. 7½d.

Poor Law Settlement.  
 Stamp Duties.  
 Property Tax.

## BILLS IN COMMITTEE.

Consolidation of Railway Clauses.  
 Consolidation of Public Companies' Clauses.  
 Land Clauses Consolidation.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### RAILWAYS BOARD OF TRADE.

THE jurisdiction of the Board of Trade over railways continues to excite great discussion in both houses of parliament. This jurisdiction is only faintly supported by the government, and we cannot believe that it will be long suffered to continue in its present state. It is now brought in a substantial shape before the House of Commons by the Railway Consolidation Bill.

### THE TRANSFER OF PROPERTY ACT.

We have reason to believe that this act will be entirely repealed, care being taken to provide for anything already done under it. This is a consummation devoutly to be wished.

### House of Lords.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment.  
 Debtors and Creditors.

#### BILLS FOR SECOND READING.

Service of Common Law Process Abroad.  
 Service of Scotch Process.  
 Bail in Error in Misdemeanors.  
 Actions on Death by Accident.

### House of Commons.

#### NOTICES OF NEW BILLS.

Abolishing Punishment of Death.  
 Prisoners' Counsel.  
 Inclosure of Commons.

#### BILLS FOR SECOND READING.

Clerks of the Peace.  
 Medical Practice.  
 Roman Catholics' Relief.

### ATTORNEYS' CERTIFICATE DUTY.

A return of the annual amount of this duty, from the former return in 1833, has been ordered, on the motion of Mr. Aglionby.

Since our last list, petitions have been presented from Plymouth and Stamford, and the petition of the Incorporated Law Society will be presented by Sir Thomas Wilde.

## THE EDITOR'S LETTER BOX.

A correspondent suggests, that as the destruction of an invaluable relic at the British Museum will give rise to an enactment to protect museum property; the provision should be enlarged and made general for all public libraries and collections.

We will endeavour to procure a report of the case mentioned by a subscriber.

Some suggestions on the Repeal of the Certificate Duty shall be attended to in our next number. The parties should communicate with each other, and arrange the course of proceeding.

The objection of T. W. H. has some foundation, but he is not aware of all the claims on our space. We exercised our best discretion under all the circumstances in the case in question, which concerned not one but many different societies.

The letters of Omega; One, &c. and M. W. have been received.

"Leguleius" on the granting of prizes, or distinctions, for excellence at the examination, shall be considered.

We have given the Accountant-General's annual return of the state of the Suitors' Fund, at p. 343, *ante*, and shall next week add the account relating to the Suitors' Fee Fund. We hope something will be done this session towards relieving the burthens of the suitors. The state ought to pay the judges and officers of all the courts. Let some of the law reformers take up this subject.

**The Legal Observer,**  
**OR,**  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, MARCH 8, 1845.

——— "Quod magis ad nos  
Pertinet, et nescire malum est, agiturus."

HORAT.

**THE PRIVATE BUSINESS OF THE  
HOUSE OF COMMONS.**

WE have from time to time called attention to the private business of the House of Commons, and to the regulations which have been made as to it. We need not point out the practical importance of this subject to our readers, especially at the present moment, when it involves property to an immense extent, invested in railways alone. A committee of the House of Commons frequently decides a matter of this nature, which, while it settles a question of a public character or bearing, deals, at the same time, with private interests to a very great extent. We shall, therefore, shortly trace the recent history of this branch of legislature.

Committees both of the House of Lords and of the Commons have sat on this subject for several years past; but we need not carry back this inquiry to an earlier period than the year 1837, when the subject was particularly considered in the House of Commons without, however, any change being made. A change was, however, made in the House of Lords, and private bills, instead of being referred to large committees as before, without any regulations, were referred to a select committee of five peers not interested in the matter. This practice has been continued in that house ever since, and is generally understood to have given satisfaction.

In the House of Commons, some alterations have been made. In the year 1838, breviatees of all private bills were ordered

to be printed, and the select committee of that year in their report<sup>a</sup> thus refer to them: "The system of breviatees of public bills, adopted at the beginning of the session, appears also to have worked extremely well, and to have given satisfaction; and the committee bear testimony to the able manner in which the gentleman selected by the Speaker for this business has discharged the duties confided to him," and the report recommended his permanent appointment. Mr. Booth, the gentleman referred to, was accordingly appointed as the counsel to the Speaker.

The committee further recommended "the employment by the government of some competent professional persons who shall classify the private business and proper drafts of general bills to be submitted to the legislature at the commencement of the session, as the form of general enactments under each head."

With respect to the next important point referred to them, the mode of conducting private business in committees, the report of the committee is very unsatisfactory. Referring to the minutes of evidence and to the appendix, they say, "It will there appear that the constitution of the present *List Committees* upon the bills, and their mode of conducting business is universally complained of. The same witnesses, however, are far from agreeing as to the remedy. The plan adopted this year by the House of Lords has been recommended by many of them, and resolutions embodying the principle in

practice, and carrying out the details of the plan, were submitted to your committee, and will be found in the appendix. In consequence, however, of a difference of opinion among your committee, it did not appear expedient to recommend the adoption of such a plan to the house, or to depart from the opinion entertained upon this subject by the committee which sat last year upon public and private business. Other modifications of the present system, not involving a departure from the principle of local representation on committees, but uniting that with the attendance of members unconnected with the interests under discussion, were likewise considered; but upon the whole your committee are not prepared at present to recommend the adoption of any change in this respect." The committee, however, recommended its reconsideration in the ensuing session.

Accordingly, in 1839, the committee resumed their labours, and made an early report, and recommended;—1, That the Speaker should reduce considerably the number of names of members on the list, and that of the names left, such members only should serve as have signified their intention of serving. 2, That on special application, any member declaring that his constituents are locally interested might be added to the list. 3, That the committee of selection should then add to the committee thus formed, a number of other members not locally interested in the bill in such proportions as they might see fit. 4, That the committee of selection consist of the chairman of the standing orders committee, and of the committee on petitions for private bills, and the then chairman of the sub-committee. Resolutions, in conformity with these recommendations were passed on the 28th of February, 1839. In the same session there was a second report by this committee, which expressed its satisfaction in the plan; and recommended the house steadily to persevere with such amendments as might be found desirable from further experience.

In 1840, the committee, advertg again to the question, states its opinion that the appointment by the committee of selection of disinterested members on committees on private bills, had had the effect of abating in a great degree practices which had excited general complaint and reprobation, and that therefore this plan ought, so far as regarded opposed private bills,

not being divorce bills, to be persevered in.

And the committee recommended, that in all unopposed private bills the chairman of the committee of supply should be one of the committee, and act as chairman, with a salary of 500*l.* a-year additional.

In 1841, the same committee directed that a printed bill shall be annexed to the petition for leave to bring in the bill.<sup>b</sup> Since that period no alteration has been made until the present session.

But in the present session it appears that some progress has been made in the preparation of bills, which are to be "model bills" on certain branches of familiar occurrence in private bill legislation. Some way has been made on these in the House of Commons, and we shall hereafter allude to their state and condition.

In the present session also another important step has been taken in this matter. A select committee was appointed to consider in what manner the accumulation of railway bills should be dealt with, and this committee has come to a series of resolutions, which we print in another part of this number, by which it will be seen that the principle for which we have always contended in this matter is to this extent fully recognised and established,—we mean, the considering the committee a judicial tribunal, and assimilating it as far as possible to other judicial tribunals, by depriving it of any direct interest in the matters before it. The effect of these resolutions will be, that the railway committees of the House of Commons will be constituted in the same manner as the House of Lords committees. We cannot but express some gratification that in this instance, as in many others, the principle which we have always considered to be the true one has at length prevailed.

We think this short account of the history of this branch of the legislature may be generally interesting.

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## THE NEW CRIMINAL LAW COMMISSION.

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THE Criminal Law Commission, which had been reduced, by retirements and elevations, to two members—Mr. Starkie and Mr. Ker, has been revoked, and a new commission has been issued, appointing

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<sup>b</sup> See 22 L. O. 476, 506.

The Right Hon. Sir Edward Ryan, Thomas Starkie, Robert Vaughan Richards, Henry Bellenden Ker, and Andrew Amos, Esqs. to be her Majesty's Commissioners on Criminal Law, and James John Lonsdale, Esq. to be secretary to the commission. We presume that the new commissioners have been appointed, according to the promise of the Lord Chancellor, on the motion relating to the criminal law in the last session of parliament, to revise and consider the learned reports of the former commissioners, with a view to carry them, or part of them, into law. We highly approve of the reappointment of this commission, and the selection of the new commissioners seems to us to be very proper and judicious.

## PRACTICAL POINTS OF GENERAL INTEREST.

### BREACH OF PROMISE OF MARRIAGE.

IF a man is induced to promise marriage, or to continue the connexion, by false representations or wilful suppression of the truth as to the real state of the circumstances of the family and the previous life of the plaintiff, this is a good defence to the action. *Wharton v. Lewis*, 1 C. & P. 529; *Foot v. Hayne*, Id. 547: a late case has carried this doctrine further. The plaintiff, when living in a respectable position of life, received a promise of marriage from a person who was then unacquainted with the fact that she had, many years ago, an illegitimate child. Another question was, whether this discovery absolved him from his promise. Mr. Serjeant Atcherley, who tried the cause, thus laid down the law: "The rule of law is, that if a man enters into a promise of marriage in ignorance of the fact that the woman has had an illegitimate child, and discovers that before the marriage, and on that ground declines entering into the marriage, he has a right to do so, although the transaction may have taken place at a distance of eight or ten years ago, and the conduct of the woman may have been since perfectly correct; but if a man knew, or had reason to believe, it to be true at the time of the promise, that the woman had had such a child, though the man afterwards gave that fact as a reason for his refusing to marry the

woman, that would be no defence in point of law. If, therefore, the defendant did not know it in this case, however great a severity it may be on a woman to rake up a transaction of by-gone times, the defendant's second plea will be sustained, and on that plea the defendant will be entitled to the verdict." *Bench v. Merrick*, 1 Car. & K. 463.

## NOTICES OF NEW BOOKS.

*The Code of Practice of the High Court of Chancery. Vol. II.; containing such of the General Orders from the time of Lord Bacon to 1845, inclusive; and such Extracts from the Statutes affecting the Practice of the Court now in use, as have reference to distinct stages of a suit, classified in the order in which they arise; with a Digest of the Decisions upon them.* By Thomas Kennedy, a Solicitor of the Court. London: Spettigue. 1845.

THIS is a valuable collection of the written orders or laws of the practice of the court, arranged in a form which affords a means of ready reference, accompanied by extracts from such of the statutes as relate to the practice and course of proceeding, followed by the judicial constructions which have been pronounced thereon, presented distinctly at one view. The book will be useful, as well to the practitioner in both branches of the profession, as to the student; the more especially at the present time, when the practice depending upon orders is in a complicated and even a confused state by the numerous alterations which have been made of late years, and when by the abolition of the Six Clerks' Office, the profession has no longer the assistance of a body of men whose duties were confined entirely to the practice of the Court of Chancery.

The practitioner will find the work a safe and convenient guide, for he can at once put himself in possession of the practice upon any required point, by reading the words of the statute or order itself, with all the interpretations put upon it by the judges, collected from every available source, and can thus form his own conclusion, without being obliged to adopt any views of the matter which have not the stamp of authority.

The student will be enabled to make himself master of all the rules of practice

from the rules themselves, consecutively arranged as a suit progresses, and, whilst so doing, of perusing, in a concise form, all the points that have arisen and been decided upon them.

The author has endeavoured to meet the difficulty which is incidental to all attempts at classification, viz., of arranging each subject under such heads as are most likely to strike the mind, by adopting as a primary basis the order of a suit which, at the same time that it directs the reader to the subject he seeks for, will also assist him as to the steps necessary to be taken in a cause as he progresses with it.

The book is divided into chapters, which comprise the general heads, such as Bills and Informations, Subpœnas; sections, containing a sub-division of those heads, and paragraphs, again sub-dividing the subject matter of the sections. Each section and paragraph is preceded by a short statement of the subject to which it refers, which the author has converted into an analysis of the orders and cases, and printed at the commencement of the volume, for the purpose of serving as a table of contents, and which the following extract will illustrate:—

#### "CHAP. I. BILLS AND INFORMATIONS.

##### *Sec. 11.—Service of copy bill.*

1. General order.
2. Case where the order has been held to be applicable.
3. Cases where the order has been held not to be applicable.
4. How the prayer is to be inserted.
5. Service on husband and wife.

##### *Sec. 12.—Entering memorandum of service of copy bill.*

1. General order.
2. Affidavit verifying the service.
3. Other matters to be stated in the affidavit.

##### *Sec. 13.—Effect of serving a defendant with a copy of the bill.*

1. General order.
2. Time for entering appearance.

##### *Sec. 14.—Consequence of not adopting the course of serving copy bill where it is proper.*

General order."

The author has well arranged his materials. He 1st gives all the orders now in use, from Mr. Beames's collection, commencing with Lord Bacon's orders in 1618, and all orders subsequently issued, up to the last order in December 1844, and extracts from the statutes relating to prac-

tice from the earliest period.

2nd. A careful digest of the decisions on those orders and statutes, including the cases from the legal periodicals, and, when necessary, a statement of any orders previously printed, and not set forth verbatim.

3rdly. Practical notes on the orders, and a statement of the practice on points not directly applicable to the orders, with a reference to cases.

The following extracts will illustrate the plan of the work:—

#### "BILL AND INFORMATION.

##### "Sec. 11.—Service of copy bill.

[After stating the general order of 26th August 1841, the following notes are given.]

##### "2. Case where this order has been held to be applicable.

"In a creditor's suit for administering the real estate of a testator, where the trustees had only a power of sale, but no legal estate given to them, the V. C. held, that annuitants and other persons to whom the estate was devised subject to such power of sale, and who were only made parties in order that they might have an opportunity of seeing that the personal assets were properly administered, were persons against whom no relief &c. was sought, and came within the meaning of this order. 1 Y. & C. (N.S.) 181.

##### "3. Cases where the order has been held not to be applicable.

"*Barkley v. Lord Reay*, 2 Hare, 306.—In a suit for raising a legacy, charged on real estate, where the trustees of such estate, having the legal fee and full powers of sale, were parties, it was held not to be sufficient to serve an equitable tenant in tail, with a copy of the bill, under this order.

"*Markev. Locke*, 2 Y. & C. (N.S.) 500.—In a suit, in which the plaintiff claimed to be entitled to certain premises as customary heir, and prayed a conveyance from defendants, who were trustees, in whom the legal estate was vested, the court observed that the words of this order 'where no account, &c.' were words not of direction but of condition; and that if the condition be not fulfilled, the whole proceeding under the order was out of place, and held that all persons claiming adversely to the plaintiff, either by various constructions of the custom, or as heirs by the common law, when a case of descent had not been provided for by the custom, were not only necessary parties to the suit, but were persons against whom direct relief was prayed, and with respect to whom therefore, the plaintiff could not avail himself of the provisions of this order.

##### "4. How the prayer is to be inserted.

"*Gibson v. Haines*, 1 Hare, 318.—The V. C. W.

"S. C. reported as *Mark v. Turner*, 7 Jur. 1102.

held that it was not necessary to insert the prayer, 'that the defendant upon being served with a copy of the bill may be found, &c.' in the prayer of process. The L. C. concurred in opinion with the V. C. W., that this order was complied with, by inserting such prayer in the general prayer for relief, but directed that for the future this particular prayer should be repeated in the prayer of process.<sup>b</sup>

"5. Service on husband and wife.

"*Kent v. Jacobs*, 5 Beav. 48.—Where husband and wife are defendants, and the suit does not relate to the separate estate of the wife, service of a copy of the bill on the husband alone is a sufficient service.

"*Steel v. Parsons*, 8 Jur. 641.—The affidavit of service however must state that the deponent served the husband and wife by serving the husband."

There is one feature in the book which should be pointed out as being entirely new, that of collecting the decisions from the legal periodicals, where many valuable points of practice not to be found elsewhere are reported, but have hitherto been unnoticed in books of practice. Our own work is much referred to by the author, and the last extract will show the importance to the practitioner of having an early report on practical points of which we were the first to set the example:—

"SETTING DOWN CAUSE ON OBJECTION FOR WANT OF PARTIES.

"2. Time for setting down.

"*Kershaw v. Clegg*, 1 Ph. 120; *Cockburn v. Tolson*, 12 L. J. 96.—The court made an order for setting down a cause, on an objection for want of parties, after the fourteen days allowed by this order for that purpose had expired, upon a motion founded on an affidavit explaining the delay. The V. C. E. in the second case observed that the order did not direct that the cause should not be set down on the objection after the fourteen days, but that the meaning of it was that within the fourteen days it might be set down upon an order of course, but that after that time the leave of the court must be obtained."

"*Calvert v. Gandy*, 29 L. O. 209.—It having been alleged by counsel, and ascertained upon reference to the registrar's book, that the order in

*Kershaw v. Clegg*, ante, was made by consent, the V. C. refused to make an order for setting down a cause on an objection for want of parties after the time limited by the general order had expired.<sup>d</sup>

"*Same v. Same*, 29 L. O. 307.—The motion for liberty to set down this cause, on an objection for want of parties, after the fourteen days limited by this general order, was this day renewed by way of appeal before the L. C. After referring to the act of parliament,<sup>e</sup> in pursuance of which the orders of the 26th Aug. 1841, were made, the L. C. refused the motion, on the ground that he had no power to relax those orders. He observed that the act left him no discretion, inasmuch as it declares that if any orders made in pursuance of it are not objected to within a time therein limited by either house of parliament, they shall be 'binding and obligatory on the court, and of like force and effect as if the provisions contained in them had been expressly enacted by parliament.' It appeared therefore to him that they had the same effect as if they had formed part of the act.<sup>f</sup>

"5. Effect of a submission to, or a decision on the objection.

"*Blackstall v. Whately*, May 9, 1843, M. R. 26 L. O. 155.—The M. R. observed that whether the plaintiff submits to an objection for want of parties, or the court decides on the objection, the question of parties was still open for consideration at the hearing. If the plaintiff submits to the objection, and does not amend his bill by making those persons parties whose absence is objected to, the effect would be that he would not be permitted to make them parties at the hearing without showing a special case for his neglect. On the other hand, if the court decides upon the objection, it only decides that certain persons are necessary or unnecessary parties with reference to the allegations in the bill and answer as they then stand; and as those allegations may be varied, the decision of the court may be also varied.

"6. Form of order.

"*Blackstall v. Whately*, May 9, 1843, M. R. 26 L. O. 155.—The order should recite that an objection had been taken for want of certain specified persons as parties, and that the opinion of the court had been asked as to such and such of them, and then contain a declaration by the court, that as the record was then constituted, such persons were or were not necessary parties."

<sup>b</sup> "The Clerks of Records and Writs require that such prayer should be inserted after the prayer for subpoena or other process, so that a defendant served with a copy of the bill should not be the first named defendant in their cause books."

<sup>c</sup> "The order in the first case was made by consent.

<sup>d</sup> "The case of *Cockburn v. Tolson*, ante, was not referred to.

<sup>e</sup> "4 & 5 Vict. c. 52.

<sup>f</sup> "This decision is of great importance, not merely as affecting this particular order, but as it prevents the court from relaxing any orders made in pursuance of the 4 & 5 Vict. c. 52, in any case whatever."

## NEW BILLS IN PARLIAMENT.

## JUSTICES' CLERKS AND CLERKS OF THE PEACE.

This is a bill "For Payment of Justices' Clerks and Clerks of the Peace by Salaries instead of Fees, and for Regulating Fees in Criminal Proceedings." It recites, "That it is expedient that justices' clerks and clerks of the peace shall be paid by salaries instead of fees. It then proposes to enact, 1. That the justices of the peace of every county in England shall at their general quarter session of the peace holden in this year, issue a precept to the justices of the peace usually acting within every division for the holding of special sessions within the commission of such first-mentioned justices, requiring them to make a return in writing under the hands of two or more of them, to the first-mentioned justices at the then next general quarter session of the peace to be holden for that county, setting forth the name and place of abode of the person appointed to act or usually acting as clerk to the justices of that division, and the amount of salary which they will recommend to be paid to such clerks instead of his fees.

2. Justices of each division to meet in special session, and make return.

3. Special return may be made where there are separate petty sessions, or a different clerk of special sessions.

4. That in all cases in which two or more persons shall, under the provisions herein contained, be appointed clerks of petty sessions of the peace in any division, they shall act as joint clerks, and not as holding several offices.

5. *Supplying vacancies.*—That in every case of vacancy of the said office of clerk, and also whenever any new division shall be formed, or it shall appear expedient that the number of clerks of petty sessions within the division be increased, the justices of the division shall hold a special session, of the holding of which session, and of the purpose for which it will be holden, seven days' notice shall be given to each of the justices acting for the division, and the greater number of the justices assembled at such session, or at some adjournment thereof, not being less than two, shall appoint another person duly qualified as aforesaid to fill the office of clerk, and shall forthwith send the name and place of abode of the person so appointed to the clerk of the peace, to be laid before the justices of the county, at their then next general quarter session of the peace, and shall also set forth the amount of salary which they will recommend to be paid to such clerk, and, in case they shall recommend any increase or decrease of the salary of any former clerk, their reasons for such recommendation.

6. *Qualification.*—That no person shall be returned or appointed to the office of clerk to the justices or clerk of special or petty sessions under this act, unless he shall be an attorney

of one of the superior courts of common law at Westminster, or shall have been articled for at least five years to a clerk of the peace or clerk to the justices of a division, except in the case of any person appointed or usually acting as clerk to the justices before the passing of this act, the justices shall certify in their return that he is sufficiently qualified by experience and knowledge of the law to perform the duties of such clerk.

7. Returns to be considered at quarter sessions.

8. *Salaries may be altered.*—That it shall be lawful for the justices of the county, at any time, in general quarter session assembled, to review the salaries appointed to be paid to the said several clerks, and from time to time, after notice given at the preceding general quarter session, that a motion will be made for that purpose to alter the same, as to them shall seem fit, either by way of increase, in case of additional duties or increase of business, or a decrease in the number of clerks appointed within the same division, or by way of decrease, in the case of a diminution of duties or decrease of business, or an increase in the number of clerks appointed within the same division; and the clerk of the peace shall certify in writing under his hand every such alteration to the treasurer of the county.

9. Salaries to be paid from county rate.

10. *Tenure of clerk's office.*—That every clerk so appointed shall hold his office during the pleasure of the justices, who shall from time to time meet at the sessions at which he acts as clerk: Provided always, That no such clerk shall be dismissed unless by resolution of the greater number of the justices present at a special session of the justices of the division, of the holding of which session, and of the purpose for which it is to be holden, seven days' notice shall be given to each of the justices usually acting for such division; and of every such resolution a minute in writing shall be made, and a copy of such minute, certified by the chairman, shall be sent to the clerk of the peace, and shall be laid before the justices of the county at their then next general quarter session of the peace.

11. Defraying expenses of clerk during vacancy of the office.

12. *Clerks disqualified from acting as attorneys.*—That no clerk appointed under this act shall, during the continuance of his office, or within six calendar months after he shall have resigned or shall have been removed from such office, be concerned, either by himself or any partner, or in any manner directly or indirectly as an attorney or agent in any matter brought or to be brought before the justices whose clerk he is, or in any prosecution at any court of sessions of the peace, or of oyer and terminer and gaol delivery, arising out of or consequent upon any proceeding before the justices whose clerk he is: and any clerk who shall offend against this enactment shall forfeit the sum of fifty pounds, to be recovered by any person who will sue for the same, by action of debt or

information, to be commenced within six calendar months next after the commission of the offence; but nothing herein contained shall subject any such clerk to any penalty for any act done by him in the discharge of his official duty.

13. Minutes to be kept, and returns made to clerk of the peace.

14. Clerks to render an account.

15. Declaration to be annexed to the account.

16. And pay the amount due to the treasurer of the county.

17. If default made, treasurer to lodge complaint.

18. *No fees to be payable except to the appointed clerks.*—That from and after the several times when such salaries shall be fixed as aforesaid, no fees or monies shall be collected or received by way of fee for any duty discharged by any justices or justice of the peace for the county for which such salary is fixed, in special or petty session, or by their or his clerk, except by or in the name of the clerk who shall be for the time being appointed clerk to the justices, or clerk of special or petty sessions as aforesaid; and the receipt of any monies in contravention of this act, shall be considered a misdemeanor, and shall also subject the party receiving the same to dismissal from office, and incapacitate him from re-election thereto, without the leave of one of her Majesty's principal secretaries of state, to be declared in writing under his hand.

#### CLERKS OF THE PEACE.

19. Clerks of the peace to render an account of fees received.

20. If such cannot be made out reason to be stated.

21. Secretary of state to examine legality of fees and amount of fees.

22. Fifty years' receipt the legalised fee.

23. Judges of Court of Queen's Bench may be consulted thereon.

24. Secretary of State, &c. to ascertain gross and net amount of fee.

25. Gross and net amount to be certified.

26. That, until otherwise directed by lawful authority, all fees, monies and emoluments that now are or may be legally received in respect of any such office of clerk of the peace, shall continue to be received, and shall be accounted for in the manner hereinafter mentioned.

27. Clerk of peace to render account in manner directed every year to treasury.

28. Declaration to be annexed to the account.

29. Accounts to be examined.

30. Surplus of fees to be paid to treasury.

31. Deficiency to be paid by treasury out of Consolidated Fund.

32. Provision in case of death, resignation or dismissal of clerk of peace.

33. No claim for compensation.

34. Clerk of the peace may be dismissed from office notwithstanding this act.

35. On death, dismissal or resignation of present clerks of peace, justices to appoint salary to be paid out of county rate. Rights of *eustos rotulorum* as to appointment of clerk of peace preserved.

36. Notice to be given of future appointments of offices whereof an account is hereby required.

37. *Fees to be uniform.*—And whereas it is desirable that the fees of clerks of assize, clerks of arraigns, clerks of indictments, associates, clerks of the peace of counties, and clerks to justices of the peace of counties, and other such public officers, should be uniform throughout England: Be it enacted, That it shall be lawful for one of her Majesty's principal secretaries of state to cause to be prepared and to settle and approve such tables of fees to be taken as aforesaid, and from time to time to alter and vary the same at his discretion; but no fees shall hereafter be allowed to be taken on any account whatsoever for or in the nature of traverse fees, nor from any prisoner or person who shall be under recognizance or otherwise, for or in the nature of proclamation or acquittal fees, nor for or respecting the discharge of any recognizance; and when such table of fees shall from time to time be settled and approved by such secretary of state, the fees therein mentioned may thenceforth be lawfully taken by the person therein mentioned, and such table of fees, so settled and approved as aforesaid, shall be transmitted to the clerk of the peace in each county, and by him distributed to each officer to receive the same, and such fees and no other, shall be taken by such officer from and after the time to be named by the secretary of state thereon; and provided that until tables of the fees so to be taken as aforesaid shall have been made and settled and approved as aforesaid, it shall be lawful for the officers and officer before mentioned respectively to take and receive the fees heretofore lawfully receivable by them or him respectively.

38. No fees to be taken but such as are contained in table.

39. Power of reducing fees vested in the Secretary of State.

40. Not to affect other compensations.

41. Appointment of deputies.

42. No addition to salary for deputy to clerk of the peace or clerks of petty sessions.

43. On death of officer, records, papers, &c. to be handed over.

44. Clerks of the peace and justices' clerks in corporations to be paid by salaries. 5 & 6 W. 4, c. 76.

45. *Exception.*—That nothing in this act contained shall extend to the fees allowed to clerks of the peace, clerks of justices, or constables of any municipal corporation in England, save as to the provision lastly hereby made for paying officers of boroughs by salaries instead of fees, and as to the application of the fees in those cases.

46. *Interpretation clause.*—That in the con-



struction of this act, unless there shall be anything in the context repugnant to such construction, the word "county" shall include a riding of the county of York, a division of the county of Lincoln, and a liberty, not being an incorporated city, town or borough, and having a separate commission of the peace; and that the words "clerk of the peace" shall include any person acting as such, or any deputy duly appointed; and that the word "division" shall include a county containing only one special sessional division, and a hundred, tithing, wapentake or other division of a county for which special sessions are now legally held, or may be legally held, by virtue of the statutes for the regulation of such divisions, and a liberty, as aforesaid, having a separate commission of the peace, and a division of any such liberty, for which special sessions now are or may be legally held.

47. *Extent of Act.*—That this act shall not extend to Scotland or Ireland, or to the city of London, and shall not authorize the appointment and payment by salary of any justices' clerk (other than clerks of special sessions) within any part of the Metropolitan Police District, for which a police court shall have been established under the 2 & 3 Vict. c. 71.

## RULES AND ORDERS MADE BY THE COURT OF BANKRUPTCY.

Rules and Orders made under the 7th & 8th Victoria, cap. 70, sect. 14, for the better carrying into effect the several purposes of the said act. January 11th, 1845.

It is ordered as follows; that is to say,

1.—That petitions under this act shall be delivered, fairly written on parchment, to the registrar of the day sitting at the Court of Bankruptcy, between the hours of eleven and two, who shall number the same as they are received, and at the rising of the court shall allot the petitions by ballot among the commissioners of the Court of Bankruptcy in London and the commissioners of the country districts, regard being had to the usual place of residence of the petitioner, the residences of the major part in number and value of his creditors, and the situation of the property to be administered; and every petition, and the number and allotment thereof, shall be entered in the private minute book of the commissioner of the day: Provided, that if for any sufficient cause, agreed by any two commissioners, any commissioner shall decline to act in the matter of any petition, or other cause shall be shown for altering the allotment, such petition shall be allotted in such manner as such two commissioners shall direct.

2.—That two fair copies of every such petition shall be delivered to the said registrar at the same time with the original petition, one for the use of the commissioner to whom the

same shall be allotted, and one for the use of the person to be appointed to preside at the meetings and for the inspection of creditors.

3.—That the sum of 10*l.*, or such other sum not exceeding 20*l.* as the commissioner to whom the petition is allotted shall direct, shall be deposited with the messenger previous to the appointment of any meeting of creditors for the costs of such meeting or meetings, the costs of serving notices upon creditors, and other necessary expenses; the residue, if any, after payment of such expenses, to be accounted for to the petitioner.

4.—That the notices required by the second section of this act shall be transmitted through the post by the messenger of the court, who shall be allowed the sum of four-pence and no more for the filling up of the forms, addressing the same, the messenger's signature, and the postage stamp.

5.—That the notices required by the fourth, eleventh, and twelfth sections of this act shall be served by the messenger of the court, (if within ten miles of the General Post Office or of the court,) or by his agent, if at a greater distance.

6.—No person, not being a creditor, or the authorized agent or attorney of a creditor, except the appointed president and one clerk, and the petitioner, accompanied by two persons, shall be permitted to be present at any meeting, or to inspect the petition, schedule, or other document, unless so directed in writing by the commissioner.

7.—The forms set forth in the annexed schedule shall, *mutatis mutandis*, be used under this act.

Chas. Fred. Williams.

E. Lindlow.

Joshua Evans.

N. Ellison

John S. M. Fonblanque.

Edmund R. Daniell.

R. G. C. Fane.

M. J. West.

Edward Holroyd.

C. Phillips.

Edward Goulbourn.

W. Tho. Jemmett.

Walker Skirrow.

Montague B. Bere.

Henry J. Stephen.

Richd. Stevenson.

John Balguy.

### No. 1.

*Petition for carrying into effect proposal for future payment or compromise of debts, under 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy, London.

The humble petition of  
Showeth,

That your petitioner being a debtor unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, petitions this honourable court under the provisions of the statute passed in the parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled "An act for facilitating arrangements between deb-

tors and creditors," with the concurrence of one third in number and value of his creditors, as is testified by their signing this his petition.

That the following is a full account of your petitioner's debts, and the consideration thereof, and the names, residences, and occupations of his creditors, and also a full account of your petitioner's estates and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him; viz.—

Name of creditor.	Residence.	Occupation.	When debt contracted, & consideration thereof.	Amount of debt.

That the inability of your petitioner to meet his engagements with his creditors arises from

That for the future payment or compromise of such debts and engagements your petitioner proposes

and one third in number and value of your petitioner's creditors having assented to such proposal;

Your petitioner therefore prays, that such proposal, or such modification thereof as by the majority of his creditors may be determined, may be carried into effect under the superintendence and control of this honourable court, and that he may in the mean time be protected from arrest by order of the said court.

CONCURRING CREDITORS.

Signature.	Amount.

No. 2.

*Affidavit of truth of allegations in petition, under 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy, London.

of  
in the of

the petitioner named in the petition hereunto annexed, maketh oath and saith, that the several allegations in the said petition are true.<sup>a</sup>

Sworn at

No. 3.

*Affidavit of signature of creditors to petition, under 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy, London.

of  
and  
of

, severally make oath and say; and first, this deponent for himself saith, that he, this deponent, was present and did see<sup>b</sup>

creditors of the petitioner named in the petition hereunto annexed, on the day of severally sign the said petition; and the above-named for himself saith, that he was present and did see and other creditors of the said petitioner, on the day of severally sign the said petition.

Sworn by at

[The remainder of the Forms will be given in our next number.]

COURTS SELECTED BY THE NEW QUEEN'S COUNSEL.

It is understood that Mr. *Hodgson* intends to devote himself to the Rolls Court. We do not hear that Mr. *Parry* has announced his decision; but there is, we believe, some probability that Mr. *Lee* will ultimately give his principal attendance in the Lord Chancellor's Court. Mr. *Wood* is said to have intimated his intention of selecting the Lord Chancellor's Court and one of the Vice-Chancellor's. We do not, however, vouch for any of these reports; indeed we rather suspect that one of them at least is erroneous.

<sup>a</sup> If the petitioner affirm, alter accordingly.  
<sup>b</sup> Put in all the creditors this deponent saw sign.

## PARLIAMENTARY RETURNS.

## SUITORS' FEE FUND ACCOUNT.

The following is the Return from the Accountant-General of the Court of Chancery, pursuant to the 5 Vict. c. 5, s. 63, from the 2nd October 1843, to 1st October 1844.

PAYMENTS.	£ s. d.			CASH.
				£ s. d.
Compensation to five Masters, at 725 <i>l.</i> per annum . . . . .	3,625	0	0	
Eleven Masters' Chief Clerks' salaries, at 1,000 <i>l.</i> each . . . . .	11,000	0	0	
Eleven ditto Junior Clerks salaries, at a 150 <i>l.</i> each . . . . .	1,650	0	0	
Total Masters . . . . .				16,275 0 0
Salaries to ten Registrars . . . . .	15,900	0	0	
Compensation to ditto, under 3 & 4 Will. 4, c. 94, s. 41, & 5 Vict. c. 5, s. 53 . . . . .	4,000	0	0	
Salaries to fourteen Registrars' Clerks, less a proportionate part accrued between the death of one and appointment of another . . . . .	6,792	13	3	
Compensation to one ditto under 5 Vict. c. 5, s. 53 . . . . .	200	0	0	
Pension to retired Registrars' Agent, under 3 & 4 W. 4, c. 94, s. 48 . . . . .	275	0	0	
Total Registrars . . . . .				27,165 13 3
Master of Reports and Entries' salary . . . . .	1,000	0	0	
Clerk of Reports . . . . .	200	0	0	
Two Clerks of Entries . . . . .	250	0	0	
Compensation to one Clerk of Entries . . . . .	100	0	0	
Salaries to Clerks of Accounts . . . . .	2,550	0	0	
Compensation to the late Master of Reports and Entries . . . . .	2,250	0	0	
Total Report Office . . . . .				6,350 0 0
Part of Examiner's salaries to two Examiners, at 700 <i>l.</i> , per annum . . . . .	1,400	0	0	
Compensation to one Examiner, under 3 & 4 Will. 4, c. 94 . . . . .	200	0	0	
Salaries to Examiners' two Clerks, less a proportionate part accrued between the death of one and appointment of another . . . . .	288	3	3	
Compensation to ditto . . . . .	217	13	3	
				2,106 2 4
Two Clerks of Affidavits' salaries . . . . .	..	..	..	650 0
Salaries, &c. under 5 & 6 of her present Majesty, c. 84 : . . . .				
Two Commissioners in Lunacy . . . . .	4,000	0	0	
Travelling Expenses . . . . .	633	8	0	
Five Clerks to Commissioners . . . . .	1,769	6	0	
Rent of premises . . . . .	330	0	0	
Expenses of offices . . . . .	628	18	2	
Secretary of Lunatics . . . . .	800	0	0	
Four Clerks in Secretary's Office . . . . .	693	19	4	
Expenses of Offices . . . . .	437	15	11	
Compensation to the late Commissioners in Lunacy . . . . .	480	0	0	
Ditto . . . to the late Clerk of the Custodies . . . . .	1,268	0	4	
Furniture, &c. for the Commissioners' Office . . . . .	685	16	10	
				11,747 4 7
Salaries, &c. under Act 5 & 6 of her present Majesty, c. 103 : . . . .				
Six Taxing Masters . . . . .	12,000	0	0	
Six Clerk to ditto . . . . .	1,495	18	6	
Clerk of Enrolments . . . . .	1,200	0	0	
Three Clerks to ditto . . . . .	750	0	0	
Four Clerks of Record . . . . .	4,800	0	0	
Twelve Clerks to ditto . . . . .	3,000	0	0	
Copy Money for writing and copying in the offices of the Taxing Masters, Clerk of Enrolments, and Clerks of Records.* . . . .	6,001	7	9	
Rent of Taxing Masters' offices . . . . .	800	0	0	
Expenses of Taxing Masters, Enrolment, and Record and Writing Clerks' offices for stationery, coals, candles, servants' wages, insurance, rates, and taxes, furniture, builders, and surveyors for alterations, &c. . . . .	3,990	3	5	
				34,037 9 8

\* £618 0*s.* 2*d.*, part of this sum, was not in fact due before the 7th December 1844, but is necessarily included in this Account, as chargeable upon the Fees upon the other side of the Account.

PAYMENTS—continued.		£	s.	d.	£	s.	d.
Compensation for loss of Offices and Profits to the undermentioned officers, under 5 & 6 Vict. c. 103:							
Five Six Clerks		7,889	11	8			
Twenty-two Sworn Clerks		30,070	4	8			
One Waiting Clerk		109	8	8			
Five Agents to Sworn Clerks		1,431	1	0			
Three Clerks of Enrolments		1,233	15	0			
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk		2,285	8	4			
Deputy Record Keeper and Agent		414	10	0			
Secretary of Decrees and Injunctions		49	13	4			
Receiver of the Sixpenny Writ Duty		68	0	0			
Bag Bearer		42	16	0			
Chaff Wax		19	16	8			
Sealer		17	14	0			
Messenger		12	12	0			
Ten Masters' Junior Clerks		1,716	14	4			
Clerk in the Public Office		500	0	0			
					45,661	5	8
Excess of Fees above Charges for the Year ending 24 Nov. 1844.		£	143,992	15	6		
			11,517	12	4		
		£	155,510	7	10		

RECEIPTS.		£	s.	d.	£	s.	d.
Fees received in the Masters' Offices		38,632	11	6			
— Registrars' Office		17,040	7	6			
— Report Office		8,218	10	8			
— Affidavit Office		5,429	19	9			
— Examiners' Office		2,267	18	7			
Fees received by Gentlemen of the Chamber		16	11	6			
— for Fines and Recoveries		452	6	8			
Proportion of deceased Six Clerks' Fees		30	0	0			
Fees received at the Subpœna Office		125	0	0			
Fees formerly payable to the Lord Chancellor		1,545	5	9			
Fees received by Secretary of Lunatics		3,725	4	6			
— Clerk to the Commissioners in Lunacy		3,321	4	8			
— Taxing Masters		32,450	2	2			
— Clerk of Enrolments		6,898	6	0			
— Record and Writ Clerks		35,330	12	7			
Interest Money brought over from the Account of "The Sale of the Six Clerks' Office"		66	6	0			
		£	155,510	7	10		

The last of the above Accounts contains the amount of the Fees received by the various Officers during the Year, and Sworn to by their Affidavits, together with the Amount due to such Officers during the same period; but as several of the Fees and Salaries due 25th November 1844, were respectively not paid in and paid out till after that date, and also as some were paid in and paid out after the 25th Nov. 1843, which were due at that date, the above Account does not exactly agree with the Accountant-General's Books, which are as follows:—

	CASH.			STOCK.		
	£	s.	d.	£	s.	d.
Paid Salaries, &c.	173,434	2	5			
Balance of Cash on the Account, 24th November 1844	52,920	12	0			
Balance of Stock — ditto				111,781	1	7
Balance of Interest Money — ditto	1,627	16	3			
Interest Money invested	6,142	16	8			
	£234,125	7	4	111,781	1	7
	CASH.			STOCK.		
	£	s.	d.	£	s.	d.
Balance of Cash on the Account, 25th November 1843	71,692	11	10			
Balance of Stock — ditto				105,456	8	4
Balance of Interest Money — ditto	4,607	2	6			
Dividends received	3,163	10	5			
Stock purchased with Dividends				6,324	13	3
Fees paid into Court during the period from 25th November 1843, to 24th November 1844	154,662	2	7			
	£234,125	7	4	111,781	1	7

WILLIAM RUSSELL, Accountant-General.

## LAW OF MASTER AND SERVANT.

THE appointment of any one of a particular body of men to do an act in a trade not distinct from that of the employer, renders an employer liable for the negligence of the person so appointed, such person becomes by the act of appointment his servant. In the case of *Martin v. Temperley*, 4 Q.B. Rep. 298, where a barge-master is compelled by the Waterman's Act to employ free watermen to navigate his barges, it was held that this is not such a compulsion to take a particular person for that purpose, as will exempt him from liability for the acts of that person.

The defendant was a barge-master, and had employed two persons, one a free waterman, the other the apprentice of a free waterman, (both being persons duly qualified under the Waterman's Act, 7 & 8 Geo. 4, c. lxxv.) to navigate barges on the river Thames. The act did not allow any persons, except those qualified under its provisions, to navigate for hire boats and barges on the river. There are about six thousand free watermen and apprentices. While two barges of the defendant were under the control of these persons they injured the plaintiff's boat, and the plaintiff brought this action to recover damages for the injury. The defendant pleaded, first, not guilty; 2nd, that the defendant had not, at the time of committing the grievance, &c., the care, direction, or management of the two barges. For the plaintiff, it was contended that the two persons navigating the barges were the defendant's servants, and *Bush v. Steinman*, 1 Bos. & P. 404; *Randleston v. Murray*, 8 Ad. & El. 109; and *Quarman v. Barnett*, 6 Mee. & W. 499, were relied on. For the defendant, it was contended that the act compelled the defendant to take somebody from a particular class of persons to do the work, that he was therefore in the situation of a master of a vessel compelled to take a pilot on board, and was thereby exempted from liability. The case of the *Maria* (1 W. Rob. Adm. Rep., pp. 95, 106,) was cited to show that this exemption from liability exists upon principle, and independently of statute, *Mellegan v. Wedge*, (12 Ad. & El. 737,) was referred to as a decisive authority. There a butcher, who was not bound to employ a drover, but who, if he did employ any one, was bound, under the bye-laws of the City of London, to employ a licensed drover, was not to be liable for injuries to a third person, occasioned by the drover's negligence. The court did not think the objection as to compulsion applied in any way, and on the other point held that *Mellegan v. Wedge* did not go to relieve this defendant from responsibility, for that here the free watermen were not persons carrying on a trade distinct from that of the defendant, whereas that was the case in *Mellegan v. Wedge*, and on this ground the decision proceeded.

## REPORT OF SELECT COMMITTEE ON RAILWAY BILLS.

THE select committee appointed to inquire into the best mode of constituting committees on railway bills in the present session of parliament, and of the most expedient manner in which railway bills, having relation to similar objects, may be brought under the consideration of the same committee; and who were empowered to report from time to time to the house;—have considered the matters to them referred, and have agreed to the following resolutions:—

1. That a committee of five members be appointed, to be called the classification committee of railway bills, and that three be the quorum of such committee.
2. That copies of all railway bills presented to the house, and a list of all projected railways, of which plans and sections have been deposited in the private bill office, be laid before the said committee, together with all reports and minutes of the Board of Trade upon such projected railways, which shall have been laid, or which shall from time to time be laid, before the house.
3. That the committee of classification shall form into groups all railway bills or projects which, in their opinion, it would be expedient to submit to the same committee.
4. That committees on railway bills during the present session of parliament shall be composed of a chairman and four members, to be appointed by the committee of selection.
5. That each member of a committee on a railway bill or bills shall, before he be entitled to attend and vote on such committee, sign a declaration that his constituents have no local interest, and that he himself has no personal interest for or against any bill or project referred to him; and no such committee shall proceed to business until the whole of the members shall have signed such declaration.
6. That the promoters of a railway bill shall be prepared to go into the committee on the bill on such day as the committee of selection shall, subject to the order that there be seven clear days between the second reading of every private bill and the sitting of the committee thereupon, think proper to appoint, provided that the classification committee shall have reported on such bill.
7. That the committee of selection shall not appoint an earlier day for the first meeting of the committee on any group of bills than the twenty-sixth day after the presentation to the house of the Reports of the Board of Trade on all railway projects included in this group, unless all the petitions for bills relating to such projects shall have been sooner presented.
8. That the committee of selection shall give each member not less than fourteen days' notice of the week in which it will be necessary for him to be in attendance for the purpose of serving, if required, on a railway bill committee.

9. That the committee of selection shall give each member a sufficient notice of his appointment as a member of a committee on a railway bill, and shall transmit to him a copy of the fifth resolution, and a blank form of the declaration therein required, with a request that he will forthwith return it to them properly filled up and signed.

10. That if the committee of selection shall not within due time receive from each such member the aforesaid declaration, or an excuse which they shall deem sufficient, they shall report to the house the name of such defaulting member.

11. That the committee of selection shall have the power of substituting, at any time before the first meeting of a committee, another member for a member whom they shall deem it proper to excuse from serving on that committee.

12. That power be given to the committee of selection to send for persons, papers, and records, in the execution of the duties imposed on them by the foregoing resolutions.

13. That no member of a committee shall absent himself from his duties on such committee, unless in the case of sickness, or by leave of the house.

14. That if the chairman shall be absent from the committee, the member next in rotation on the list (who shall be present) shall act as chairman.

15. That committees shall be allowed to proceed so long as three members shall be present, but not with a less number, unless by special leave of the house.

16. That if on any day, within one hour after the time appointed for the meeting of a committee, three members shall not be present, the committee shall be adjourned to the same hour on the next day on which the house shall sit which had been fixed for that day.

17. That in the case of a member not being present within one hour after the time appointed for the meeting of the committee, or of any member absents himself from his duties on such committee, such member shall be reported to the house at its next sitting.

18. That each committee shall be appointed to meet on each day of its sitting, not later than twelve o'clock, unless by the regular vote of the committee.

19. That parties promoting railway projects which have been grouped together by the classification committee, shall be permitted to appear before the committee on a railway bill belonging to such group, and to offer evidence either against the bill immediately under the consideration of the committee, or in support of their own projects.

20. That in committees on a bill or bills, when such evidence has been given, it shall be within the competency of a committee to adjourn their proceedings until the bill or bills for such other projects shall be before them, care being taken by the committee of selection that in all such cases the bills for the so opposing projects shall be referred to the com-

mittee by which the first bill or bills had been considered.

21. That as soon as the committee of classification shall have determined what railway bills or projects are to be grouped together, they shall report the same to the house, and all petitions against any of the said bills or projects shall be presented to the house three clear days before the meeting of the committee thereon.

22. That as soon as the committee on a group of railway bills or projects shall hear, so far as may be necessary, parties appearing in support of such petitions, so as to receive without interruption the whole of the evidence on the general merits of all the bills or projects before them, and also on the details of the bill or project, or bills or projects, which they shall be of opinion ought to be adopted, in order that if the committee should consider that a bill or bills not yet read a second time at the time of the inquiry, ought to be preferred, they may be enabled, when that bill or bills shall be formally committed, to dispense with receiving any further evidence, and to confine their proceedings to making such amendments in the clauses as their previous investigation may have shown to be necessary.

## ALTERATION OF THE CIRCUITS.

Wz some time ago (Dec. 14th) adverted to the intention of altering the circuits. The information we then received appears to have been well founded, for it is now announced in the London Gazette that her Majesty has appointed commissioners for inquiring into the expediency of altering the circuits of the judges in England and Wales. They are as follow:

Mr. Baron Parke.  
Mr. Baron Alderson.  
Mr. Justice Coleridge.  
The Hon. James Stuart Wortley.  
Mr. Fitzroy Kelly, Q. C.  
Mr. Whateley, Q. C.  
Mr. John Greenwood.  
Sir William Heathcote, Bart.  
Mr. Edward Denison.  
Mr. T. G. B. Estcourt.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by Wm. FINNELLY, Esq., Barrister at Law.]

PRACTICE. — ABATEMENT. — REVIVER — COSTS.

*A bill was filed by the committee (or curator) of a lunatic, (a foreigner,) in the names of both, against a person in whose name the lunatic had vested a sum of money in the*

*English funds, and the parties beneficially interested. Upon the death of the lunatic, before the cause was heard, the defendant obtained probate of his will, and then applied for an order on the surviving plaintiff to revive the cause or dismiss the bill: Held, that the plaintiff having no interest, the court had no power to make the order.*

THE Duke del Infantado had vested a sum of 10,000*l.* in English consols, in the name of Don Jose Vieta, and by an instrument in writing declared the trusts thereof to be for the benefit of Madame Monte-negro and her children by the Duke. He was afterwards duly found a lunatic by the proper tribunal, in Spain, and Don Emanuel Toledo being appointed his curator, [committee of his person and estate,] filed a bill in the Court of Chancery, in the name of the Duke, and in his own as such curator, against Vieta and the parties beneficially interested in the fund. Vieta alone appeared to the bill. The Duke died before the cause was brought to a hearing, and upon his death Vieta obtained probate of his will, limited to the 10,000*l.* vested in the English funds. The cause having thus abated, Vieta moved the Vice-Chancellor of England for an order that Toledo should revive the cause within a certain time, or that the bill be dismissed with costs, for want of prosecution. The Vice-Chancellor refused that motion, with costs. Vieta appealed.

Mr. Roll, in support of the appeal motion, submitted that the surviving plaintiff should be called on to revive, or if, under the circumstances, he, having now no interest, would not revive the suit, the bill ought to be dismissed, with costs against him, for having commenced a suit which he was not able to prosecute. If he was not to pay the costs of that proceeding, a precedent would be established for any person to worry another with impunity, by filing a bill in Chancery and putting him to the trouble and costs of appearing and answering. If this plaintiff was not to pay the costs, they must fall on the trust-fund—a great hardship on the cestuis que trust. He cited *Chowick v. Dimes*,<sup>a</sup> and other cases mentioned in the report of that case, and in the notes to it.

Mr. Lloyd, contra, submitted that the court had no jurisdiction to order Toledo to revive, his interest, being that of curator only, and being now entirely gone; so that this was like the case of a sole plaintiff, on whose death no one could be compelled to revive or pay the costs. In the case cited it was said the Vice-Chancellor, in deference to that, reversed his own former decision in *Cankan v. Vincent*,<sup>b</sup> but there is no report of any such overruled case; and the other Vice-Chancellors have since clearly decided that they have no jurisdiction to make such an order as is here asked for. *Dryden v. Walford*;<sup>c</sup> *Lee v. Lee*.<sup>d</sup> He therefore

hoped his lordship would dismiss this motion, with costs.

The Lord Chancellor.—It is impossible for the surviving plaintiff to revive the suit, as he has now no interest in it. The defendant now represents the Duke, for whose benefit this plaintiff had the bill filed. The defendant alone, as representing the deceased plaintiff, could revive, but he cannot be plaintiff and defendant. The event by which the suit has abated was the act of God, and in consequence of that act the surviving plaintiff cannot take any proceeding in this cause. It is evident—indeed it is all but admitted—that the cause cannot be revived by this plaintiff; and the question is, who is to pay the costs? Now the court has no more power to order the plaintiff to pay costs in a non-existing cause, than it has to order him to revive.

The parties must therefore remain in the position they are in, and pay their own costs of this cause, and this motion must be refused, and, according to the usual course, with costs.

*Toledo v. Vieta*, January 11, 1845.

#### Rolls Court.

[Reported by E. VANSITTART NEALE, Esq.,  
Barriester at Law.]

AGREEMENT TO PAY COSTS.—TAXATION.—  
38TH SECT. OF 6 & 7 VICT. c. 73.

*The court will not, upon a petition for taxation, decide a question as to the effect of an agreement to pay costs.*

Semble, That a party who petitions for the taxation of a solicitor's bill, under the 38th section of 6 & 7 Vict. c. 73, cannot complain of any charges which would be proper as against the party by whom the bill was originally payable.

THIS was a petition to have a bill of costs, which had been paid within the year, referred for taxation, under the 38th section of 6th & 7th Vict., c. 73, in the following circumstances: The petitioners were defendants in a suit which had been brought to procure the payment of a share of a certain sum of money, of which these defendants, who appeared to have been entitled to two-thirds of it only, were said to have obtained possession. Before the institution of the suit, the plaintiff had employed a solicitor in the country to make enquiries relatively to the sum in dispute. When the suit was instituted, the solicitor had employed a London firm to conduct it. It was compromised before the answer of the defendants had been put in; and on that occasion a memorandum of heads of agreement was drawn up and signed by the solicitors on both sides, and one of the articles of agreement was thus expressed: "Costs to be paid by the defendant." Under this agreement, the plaintiff's solicitor claimed not only the costs incurred in the suit, as between solicitor and client, but all the costs incurred by the plaintiff in endeavouring to procure the information which led ultimately to the institution of the suit. The defendants insisted that the

<sup>a</sup> 3 Beav. 290.

<sup>b</sup> 8 Sim. 277.

<sup>c</sup> 1 Y. & C. New Cases, 624.

<sup>d</sup> 1 Hare, 617.

agreement entitled the plaintiff only to the costs of the suit as between party and party. The petition did not specify any particular items as erroneous; but it was contended that, according to the decision of Lord Lyndhurst in *Sayer v. Wagstaffe*, 8 Jur. 1083, *supra*, 168, it was not necessary to do this where the bill proceeded, on the face of it, upon a wrong principle, which it was said this bill did, in seeking to procure the payment of the charges preliminary to the suit.

Mr. Lloyd, for the petition.

Mr. Kindersley was on the other side. But Lord Langdale, without hearing him, said, that he did not think the allegations in this petition were sufficiently explicit to have induced the court to exercise its discretion in sending the bill for taxation, even if there had been no other objection to it. No items were specified as erroneous; but there was a general charge that the bill contained many erroneous and improper items. He thought that the petition must specify the particular items objected to. But besides this, he did not think that the act gave him the power to entertain the question raised by the petition at all. Here there was a memorandum of agreement as to the payment of costs: the question between the parties was, what it meant. Now he might be wrong in his opinion, but he did think that the court had not authority to settle this question upon a petition for taxation. Where there was no dispute as to the effect of an agreement to pay costs, the court might indeed on petition order a taxation of the costs included in it; but he considered it as a principle, in which he did not think the recent act had made any alteration, that where a conflict arose as to the meaning of the agreement, the court could not decide it upon petition. The petition must therefore be dismissed.

A question then arose as to whether it was to be dismissed with costs; the Master of the Rolls being at first inclined, from the case as stated for the petitioner, not to give the costs. The argument turned in part upon the conduct of the parties; but the right of the respondent to costs was also placed by Mr. Kindersley upon the ground that the petitioner, coming in under the 38th section of the act as a person "having paid" this attorney's bill, must place herself in the situation of the party by whom the bill was originally payable; while it was not alleged, in the present instance, that as between the solicitor and his client, the plaintiff in the compromised suit, there were in the bill any objectionable items. Therefore, on this ground alone, the petition must fail.

The Master of the Rolls appeared to accede to this view, and ultimately dismissed the petition, with costs.

*Re Thompson ex parte Harris*, January 18th, 1845.

Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

VILL, CONSTRUCTION OF.—SPECIFIC BEQUEST.

A testatrix, by her will dated in 1832, gave

200*l.* three and a half per cents, stated to be standing in her name, to her nephew and niece, with benefit of survivorship. The 200*l.* remained invested in the testatrix's name until May 1836, but she had also purchased other sums by which the amount became increased to 480*l.* In August 1836 she sold out the whole 480*l.*, and invested 397*l.* 12*s.* 6*d.*, part of the produce, in the purchase of 25*l.* per annum long annuities. In October 1836 she made another will, which contained a similar statement to that contained in the first will, as to her being possessed of 200*l.* three and a half per cents, and also a similar bequest of it to her nephew and niece, although she had no stock except the long annuities. The niece died an infant. Held, that the nephew was entitled to the long annuities.

THE testatrix in this cause, by her will dated the 20th November, 1832, which recited that there was then standing in her name in the books of the Governor and Company of the Bank of England the sum of 200*l.* three and a half per cent. reduced annuities, bequeathed the same and all accumulations thereof unto and among her nephew and niece, Joseph King and Laura King, children of her brother Joseph King, in equal shares and proportions, the share of each of them to be transferred to her said nephew and niece, when and as he or they should respectively attain the respective ages of 21 years, with benefit of survivorship. And the testatrix directed her executrix to receive the dividends and interest which should from time to time become due and payable on the said bank annuities, and lay out and invest the same in the purchase of like bank annuities, which accumulations thereon should in like manner be transferred to her said nephew and niece and the survivor of them.

The 200*l.* three and a half per cent. annuities remained invested in the testatrix's name until the 18th May, 1836, and she had also, subsequently to the date of her will, purchased various other sums of stock, so that on the 18th of August, 1836, she was possessed of 480*l.* three and a half per cent. annuities. On that date she sold out the whole of the 480*l.*, and invested 397*l.* 12*s.* 6*d.*, part of the produce, in the purchase of 25*l.* per ann. long annuities; but she never afterwards possessed any three and a half per cent. annuities, or stock of any kind, except such long annuities. On the 5th of October, 1836, she made another will, which contained the same recital as to her being possessed of 200*l.* three and a half per cent. annuities, and the same bequest of that sum to her nephew and niece, as were contained in the will of November 1832; but by this will she gave various specific legacies, and concluded by giving her wearing apparel, and everything else of every description, to be equally divided by her executor amongst his mother-in-law and sister-in-law and the testatrix's niece Laura King.

The testatrix died on the 10th of October, 1836, without having altered or revoked her last-mentioned will, which was proved by the



defendant Wright, the executor, who had since sold out the 25*l.* per annum long annuities, and applied a portion of the produce in payment of the debts and pecuniary legacies given by the will; and the question now to be determined was, to whom the residus of such produce belonged. The plaintiff was the widow and administratrix of the testatrix's brother, who was her sole next of kin, and was also the administratrix of Laura King, the testatrix's niece, who died an infant.

Wood, for the plaintiff, contended, that as representing the next of kin of the plaintiff, she was entitled to the whole fund, for it was clear the testatrix had not, at the time of her death, any stock answering the description of that given by her will. This was not a case where the doctrine of *falsa demonstratio non nocet* could apply, for the testatrix marked out a definite sum in a definite stock, and there was nothing whatever to answer the description. If it were held that the 25*l.* per annum long annuities must be substituted for the 200*l.* three and a half per cent. annuities, by the same rule must it also be held that any sum, however large the amount, must in like manner be substituted.

Tred and Messeter, for the nephew Joseph King, urged that it was so clearly a mistake of the testatrix, the court might fairly rectify it, in order to give effect to her intention. At the time she made the first will she was possessed of the stock bequeathed by her, and the second will was a mere copy of the first, with an addition of some specific legacies. It was evident, therefore, that she intended her nephew and niece to take the same benefit as she gave them by her first will, but no doubt the circumstance of her having changed the stock did not occur to her. The case of *Schoood v. Mildmay*, 3 Ves. 306, was quite in point, and there it was held that a sum of long annuities, which had been purchased by the sale of stock specifically bequeathed, belonged to the legatee of the original stock.

Whitbread for the residuary legatee.

Hoare for the executor.

The Vice-Chancellor said, there was this difficulty, that according to the first will of the testatrix it was clearly her intention to give the whole of her three and a half per cent. stock. She then increased the quantity, and subsequently invested the whole in the 25*l.* per annum long annuities, which it was also pretty clear was of more value than 200*l.* three and a half per cent. annuities. He must, however, take time to consider.

February 11*th*.—His Honour this morning delivered judgment, and said, that upon further considering the will he thought there could not be a question as to its proper construction, and that Joseph King, as the survivor of the nephew and niece, was entitled to the whole fund. The costs of all parties would come out of the fund.

Wright v. King, February 1st and 11th, 1845.

### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### MANDAMUS. — IMPORTATION OF SPIRITS FROM JERSEY. — PERMITS.

*Spirits were imported from the island of Jersey under the 3 & 4 W. 4, c. 52, s. 40, and certain duties therein mentioned had been paid upon them. The section contains a proviso "That such spirits may be charged with any proportion of such duties as shall fairly countervail any duties of excise on the like goods, the produce of the United Kingdom;" Held, that these proportional duties must be paid before the importer is entitled to demand a permit from the commissioner of excise to remove such spirits, and he cannot make such demand without a previous request being addressed to them for a permit, according to the provisions of the 2 W. 4, c. 16, sections 5 & 6.*

*When a proper officer is appointed, whose duty it is to grant permits, but who acts under the orders and directions of the commissioners of excise, quere, whether in case of refusal to grant a permit, the commissioners are the persons against whom an application for a mandamus should be made.*

A RULE nisi had been obtained calling on the defendants to show cause why a mandamus should not issue, commanding them to grant a permit for the removal of two casks of spirits which had been imported into England from the island of Jersey. The duty had been paid under the 3 & 4 W. 4, c. 52, s. 40, which enacts, "That it shall be lawful to import into the United Kingdom any goods of the produce or manufacture of the islands of Guernsey, Jersey, Alderney, Sark and Man, from the said islands respectively, without payment of any duty, (except in the cases hereinafter mentioned); and that such goods shall not be deemed to be included in any charge of duties imposed by any act hereinafter to be made on the importation of goods generally from parts beyond the seas; provided always, that such goods may nevertheless be charged with any proportion of such duties as shall fairly countervail any duties of excise, or any coast duty payable on the like goods, the produce of the part of the United Kingdom into which they shall be imported." By the 2 W. 4, c. 16, being an act for regulating the granting of permits for the removal of goods under the excise laws, it is enacted by section 5, "that no permit shall be granted by any officer of excise until a request note, or requisition in writing shall have been delivered by or on behalf of the person requiring such permit; and every permit which shall be granted without a request note or requisition being delivered in manner required by this act, shall be actually void, and shall not protect any goods, wares, or merchandise, mentioned in such permit." No request note had been delivered by the applicant pursuant to the statute 2 W.

4, c. 16, s. 5, because he insisted that the spirits imported were not subject to the excise regulations the same as goods the produce of the United Kingdom, but were only liable to the duty imposed by statute 3 & 4 W. 4, c. 52, which had been already paid.

The *Solicitor-General*, (Sir F. Thesiger,) Mr. *Jervis*, and Mr. *Waddington*, showed cause.

In the first place, no mandamus lies in this case. In *Res v. The Commissioners of Customs*,<sup>a</sup> the court refused a mandamus to compel the commissioners of customs to deliver up goods placed rightfully in their custody, to secure the duty on a suggestion that the full amount of the duty had been since tendered or paid. Mr. Justice *Littledale* there says, "that a mandamus cannot be granted against a party acting merely as officer of the crown." If the commissioners are not entitled to retain the goods, they are wrong doers, and the proper remedy is by civil action, as for instance, trover or replevin.

It was also contended that the rule ought to have been applied for against the officer whose duty it was to grant permits, and not against the commissioners, but this objection was waived by the *Solicitor-General*.

These spirits imported from the island of Jersey, under the 3 & 4 W. 4, c. 52, s. 40, are subject, under the proviso contained in that section, to the countervailing duties of the excise, otherwise the importers of such spirits would have an unfair advantage over the dealer in English spirits. These spirits therefore are placed under the excise regulations, and the importer, before he is in a situation to demand them, must first present a request note or requisition in writing, according to the provisions of the 5th section of the statute 2 W. 4, c. 16. The form of the request note is pointed out by the 6th section, and the particulars which it ought to contain are thus specified; and if a permit is granted without a proper request note, the goods will not be protected. The request note therefore forms the foundation of the permit, and unless it can be shown that the statute 2 W. c. 16, has been complied with in this respect, the applicant cannot come to this court for a mandamus.

Mr. *M. D. Hill*, and Mr. *Gurney*, contra.

A mandamus lies under the circumstances of this case. In *Res v. The Commissioners of Excise*,<sup>b</sup> the court refused an application for a mandamus, but it was refused on the merits, and throughout the argument it was not disputed that a mandamus was the proper remedy. Mr. Justice *Ashurst* says, "The court ought not to grant a mandamus to the commissioners of excise, unless they see that the officer has done wrong in refusing the permit." The complaint here is, that the commissioners in the honest discharge of their duty have put a wrong construction upon certain acts of parliament; and in the case of a nonfeasance, where there is no imputation against the parties, there

is no reason for saying that a mandamus will not lie. It appears from numerous cases, that where a public officer acts fairly in the discharge of his duty, no action will lie against for any act done. An action can only be maintained when it can be shown that he has acted from some corrupt motive. *Ashley v. White*;<sup>c</sup> *Cullen v. Morris*;<sup>d</sup> *Harman v. Toppenden and others*.<sup>e</sup>

The statute 2 W. 4, c. 16, with respect to the request note, is in effect repealed by the Customs Regulation Act, 3 & 4 W. 4, c. 52. The spirits have been imported according to the provisions of that act, and a proper compliance with that statute should authorise the commissioners to grant a permit. There has been a bill of entry delivered, and a certificate of origin made out as directed by the statute.

*Curr. adv. vol.*

Lord *Denman*, C. J., now delivered the judgment of the court.

This was an application to the court for a mandamus to the commissioners of excise to grant a permit for the removal of two casks of spirits imported into England from the island of Jersey. A doubt was raised by the commissioners, whether in a case of this sort the court could issue a mandamus to them, but the doubt was not pressed, and it is not necessary to determine that question now. The spirits had been imported and the duty paid under the 3 & 4 W. 4, c. 52, s. 40, which makes it lawful to import spirits from Jersey upon payment of certain duties in that section specifically mentioned, but the section provides that "such goods may, nevertheless, be charged with any proportion of such duties as shall fairly countervail any duties of excise, or any coast duties payable on the like goods, the produce of the part of the United Kingdom into which they shall be imported." It is said by the commissioners of excise, that under this section such spirits are subject to the same regulations of excise as spirits manufactured in England, and cannot therefore be removed without a previous request being addressed to the commissioners for a permit, according to the provisions of the 2 W. 4, c. 16, ss. 5 & 6, and without such request note, any permit granted by the excise would under those sections be void. Now in this case the provisions of those sections have not been complied with. But then it is said on the part of the applicant, that no request note need be delivered, for that those sections of the 2 W. 4, are in fact repealed by the 52nd section of the 3 & 4 W. 4, c. 52, which regulates the delivery of certain goods after their importation, expressly provides for the cases of goods subject to the regulations of excise, and does not say one word of a request note being necessary, although it deals with the subject of permits, and introduces new enactments with relation to such matters. But we think that the express object of this section was, to place certain imported goods under the regulations of the excise, in the same manner as

<sup>a</sup> 5 Adol. & Ellis, 280.

<sup>b</sup> 2 T. R. 361.

<sup>c</sup> 2 Ld. Raym. 938.

<sup>d</sup> 2 Stark. 577.

<sup>e</sup> 1 East, 665.

goods manufactured in this country, and we do not doubt that a note of request is still necessary. It certainly was necessary in the case of these goods. Though in this section other matters are added, which apply to imported goods not of this sort, the necessity for the note of request is not removed. We think, therefore, that without a note of request the applicant here was not intitled to ask for a permit, and consequently is not intitled to ask us for a mandamus to enforce the granting of one.

Judgment for the defendants.

*The Queen v. The Commissioners of Excise.*  
Sittings in banco after H. T., 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Trail v. Bull*, 1 Coll. 352.

### EXECUTOR'S ASSENT.

It is the duty of the executor to apply the testator's property *primo loco* in the payment of his debts; and, to the extent of the estate, the executor is reponsible to the creditors. For although the will may contain legacies, that is to say, may express the intention of the deceased to perform acts of bounty; yet it is the executor's province to determine whether, regard being had to the just claims of creditors, such bequests ought to be sanctioned. Hence it is that every legatee, whether general or specific, and whether of chattels real or personal, must obtain the executor's assent to the legacy before his legal title as legatee can be considered perfect and complete. As to what shall constitute such assent, the law has prescribed no specific form; and it may either be express or implied. In a late case *Mason v. Farnell*, 12 M. & W. 674, it was decided that the question of the executor's assent is not a matter of law, but of fact; to be collected from circumstances and from conduct, with respect to which, every case must be judged of by special reference to its own peculiarities. Thus, for instance, if a horse is bequeathed, and the executor requests the legatee to dispose of it; or if a third person proposes to purchase the horse of the executor, and he, the executor, directs him to buy it of the legatee; or if the executor himself purchases the horse of the legatee; in each and all of these cases, there is an assent by implication to the legacy; whereby the legatee's legal title is consummated. The executor must be careful not to assent without good grounds; for if he once assent, it is held that he can never afterwards retract; and notwithstanding a subsequent dissent, the effect of the previous assent is so strong, that a specific legatee has a right to take the legacy, and has a lien for the specific article, and may follow it.<sup>a</sup> But in the case of a general legacy, if the assent has not been followed up by actual payment, and if its recal is not productive of injury to a third

party, (as, for example, to a *bona fide* purchaser from the legatee on the faith of such assent,) it seems reasonable that the executor should have the power of retracting, where unknown debts are unexpectedly demanded, and occasion a deficiency.

If an executor refuse his assent without cause, he may be compelled to give it by a court of equity.<sup>b</sup>

The case which we have placed at the head of this article is very instructive to show under what states of circumstances the court will construe, that the requisite executorial assent has taken place. The testator, Charles Salmon, had bequeathed unto his wife Elizabeth all his personality absolutely, except certain leasehold houses, the rents of which, however, he gave to her for life; directing that after her death they should be sold, and the produce equally divided between his daughters Mary Anne and Elizabeth, and his sons Charles and William, share and share alike. The testator appointed his wife executrix, and his friend Thomas Bull executor of his will. After his decease, the widow proved the will, and took possession of his personal estate, including the rents of the leasehold houses; and paid all the debts, excepting a few of trifling amount. She died in November 1836; and probate being soon afterwards taken out by Bull, the other executor, that person brought the leasehold premises to sale. The price was invested in consols, and the deed of assignment to the purchasers was executed, not only by Bull as executor, but by three of the parties, entitled each respectively to one-fourth part of the fund, which these three respectively received from Bull, pursuant to the trusts of the will. Bull died in March 1840, and the bill was filed against his widow and executrix by Elizabeth Salmon, who, it appeared, had not yet received her fourth share of the purchase-money. The defence relied upon was, that since the other shares had been paid, circumstances had occurred to make it necessary to retain the share of the plaintiff by way of indemnity against certain covenants; and it was insisted that no assent had been given by Mrs. Salmon or by Bull, to the bequest in question.

Upon a report from the Master, it appeared that Mrs. Salmon had, upon several occasions, stated that she meant to retire from business, and live upon the rents of the houses bequeathed to her for life; and that she gave instructions to a gentleman to prepare her will, informing him that the property she was possessed of had accrued to her under her husband's will. In addition to which it further appeared that she had, on different occasions, said that at her death the premises would go to her children. On behalf of the plaintiff it was, under these circumstances, contended that the sale by Bull was in the character of a trustee, and not as executor; why otherwise should he have embarrassed himself with the *cestui que trusts*, who were

<sup>a</sup> *Mead v. Orrery*, 3 Atk. 238.

<sup>b</sup> Com. Dig. Adm. (c. 8.)

joined as parties in the conveyance to the purchaser? The evidence of the assent being, therefore, sufficient, the law on the point was clear. For it had been decided long since, that where a term of years, or other chattel, was bequeathed to A. for life, with remainder to B., and the executor assented to the interest of A., such assent would enure to the benefit of the remainder-man B.<sup>c</sup> The Vice-Chancellor *Knight Bruce* held under the circumstances of the case, that the assent was sufficient, and declared accordingly in favour of the plaintiff.

*Thompson v. Blackstone*, 6. Beav. 470.

**SPECIFIC PERFORMANCE, SOUGHT UNDER CIRCUMSTANCES INVOLVING A BREACH OF TRUST.**

The court will not enforce a contract involving a breach of trust. Thus, if the sale be by trustees, and if the contract be entered into under circumstances which amount to a dereliction of their duty, the purchaser will not obtain a decree for specific performance. In such a case he may resort to a court of law; but he has no claim to the assistance of a court of equity. In the above case, the testator devised a certain estate to his wife for life, and after her decease to his sons, (the plaintiffs), "in trust to sell and dispose of the same for the best price that could be gotten for the same."

After the testator's death the widow incurred a debt to the defendant, as did likewise her eldest son Richard. She died in 1839. In 1840, Richard, for himself and his brothers, sold the property to the defendant for 620*l.*, upon an agreement that 240*l.* was to be retained by the defendant for the debts due to him from the widow and from Richard, the latter (Richard) being declared "accountable to the estate of the testator for the full sum of 620*l.*" The result was, that an agreement in writing was signed, whereby the defendant agreed to purchase for the difference between his demand and the stipulated price, namely, 380*l.*

Under these circumstances, the bill prayed a specific performance. The defendant demurred for want of equity, alleging that the contract involved a breach of trust. The plaintiffs, *contra*, contended that there were no trusts to perform, and it certainly did not clearly appear by the bill what the trusts were, if in fact there were any in the case.

Lord *Langdale*, M. R.—"There is a trust alleged, which, though not very distinct, is more than sufficient to prevent such a contract as this being carried into effect by the aid of this court. A beneficial interest is alleged, as well as a trust for sale. Yet I am desired to suppose that the trust for sale was without any object; so that there was a resulting trust for the benefit of the heir; and I am further to assume that one of these plaintiffs is the heir, though

he be not so stated to be. I cannot assume either of these facts, especially when I find this statement, that the trustees for sale are to be accountable to the estate of the testators for the whole amount of the purchase-money. There is enough to show that there is a trust to be carried into effect, and that what is sought to be done is a deviation from it."

Demurrer allowed.

*Chapman v. Fowler*, 3 Hare, 557.

**VENDOR AND PURCHASER.—OPENING OF BIDDINGS.—COSTS.**

Under a decree of the court, in an administration suit, an estate was sold by auction, and one A. was reported purchaser at 280*l.* The father of the parties who would have been entitled to the residue, (if any residue should remain after satisfying the debts of the testator,) obtained an order to open the biddings, paid the costs of the purchaser, and deposited 70*l.*<sup>d</sup> Upon a re-sale, the property was knocked down to another purchaser (not the father) at 410*l.* The father presented a petition to be allowed his costs, and in support thereof, by his affidavit, stated that he had acted with the purpose of benefiting the estate. The prayer of the petition, which was not opposed, was granted by Vice-Chancellor *Wigram*.

*Hopkins v. Freeman*, 14 Law Journal, New Series. 21 Exchequer.

**EXECUTION WHERE DEBT UNDER 20*l.***

That the original debt is under 20*l.* is not a ground for staying proceedings in an action on a judgment. In practice, final judgment is entered up for the aggregate amount of the debt, or damages, and costs; and, whilst the judgment of a competent tribunal remains unsatisfied, the party by whom it is obtained is always at liberty to bring a fresh action on it in any of the courts of common law; although, in order to prevent this power of bringing successive actions for the same debt or cause of action from becoming a source of oppression by the multiplication of costs, the stat. 43 Geo. 3, c. 46, enacts: "that in such cases the plaintiff shall not recover costs, unless the court or a judge shall otherwise order." By the late sta-

<sup>d</sup> See 1 Sug. V. & P. 122, 10th edition.

\* It would seem from the observation of *Parke*, B., in *Hanmer v. White*, (12 Mees. & W. 519,) that the court, in its discretion, will not allow costs to a plaintiff who unnecessarily brings upon himself the expenses of an action on a judgment. Whether a plaintiff who is prevented by the operation of law from issuing the only species of execution under which he could reasonably expect to obtain the fruits of his judgment, and therefore resorts to a form of action in which he can avail himself of that species of execution, can be said to do so unnecessarily, remains to be determined.

<sup>c</sup> 3 P. Williams, 12; see also Plowd. 521; Com. Dig. Adm. (c. 6.)

tute, (commonly, though it now appears erroneously,) denominated Lord Brougham's Act, (7 & 8 Vict. chap. 96, s. 57,) it is enacted: "that no person shall be taken in execution, in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of 20*l.*, exclusive of the costs recovered by such judgment."

In September 1844, the plaintiff Hopkins obtained judgment in an action for a debt of 19*l.* 12*s.*, which with the costs amounted to 29*l.* 3*s.* 4*d.*: he afterwards brought an action on the judgment. The Court of Exchequer refused an application for a rule to show cause why the proceedings should not be stayed, on the suggestion that the object was to evade the act of parliament, by taking the defendant in execution for a debt originally under 20*l.* The court intimated, that there were no words in the act to meet the case, and that there was no power to deprive the plaintiff of his right of action on the judgment.

#### *Regina v. Colley*, 2 Mood. & Rob. 475.

##### INDICTMENT.—MISDESCRIPTION:

This was an indictment for setting fire to a *stable*. It appeared in evidence that the building was originally a stable, but had for eight or ten years been allowed to go to decay, and used only as a *shed*; the manger and racks being removed, and the roof having partly fallen in.

*Cresswell, J.*, thereupon ruled that the indictment could not be sustained, as the description therein contained of the building was not applicable to its present state: and his lordship directed an acquittal.

### PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

#### BANKRUPTCY LAWS.—ABOLITION OF ARREST.

On the presentation of a petition to the House of Lords on the 4th instant, complaining of the operation of the bankruptcy and insolvency laws, and particularly of the abolition of arrest for debts under 20*l.*, a discussion took place in which Lords Brougham and Campbell expressed their opinions in favour of an act for rendering the salaries of debtors, and all other income and property, available for payment of debts.

A consolidation and amendment of the laws of bankruptcy and insolvency is desirable, and we trust no time will be lost in preparing it.

#### ECCLESIASTICAL COURTS.

In answer to a question from Lord Campbell, on Tuesday last, the Lord Chancellor said he had no intention of bringing in a bill during the present session for the reform of the Ecclesiastical Courts.

#### House of Lords.

##### NOTICES OF NEW BILLS.

Transfer of Property Amendment.  
Debtors and Creditors.

##### BILLS FOR SECOND READING.

Bail in Error in Misdemeanors.  
Actions on Death by Accident.  
Deodand Abolition.

##### IN COMMITTEE.

Service of Common Law Process Abroad.  
Service of Scotch Process.  
Service of Irish Process.

#### House of Commons.

##### NOTICES OF NEW BILLS.

Abolishing Punishment of Death.  
Prisoners' Counsel.  
Inclosure of Commons.  
County Rates.

##### BILLS FOR SECOND READING.

Clerks of the Peace.  
Medical Practice.  
Roman Catholics' Relief.  
Poor Law Settlement.  
Assimilating Irish Stamp Duties.  
Property Tax.  
Law of Bastardy.

##### BILLS IN COMMITTEE.

Consolidation of Railway Clauses.  
Consolidation of Public Companies' Clauses.  
Land Clauses Consolidation.

#### ATTORNEYS' CERTIFICATE DUTY.

We are sorry to be unable to record any movement towards the repeal or reduction of this impost, except another motion by Mr. Aglionby at the instance of the Law Society for returns of the annual amount paid on articles of clerkship to attorneys. The return we last noticed was that of the amount annually received for certificate duty.

### THE EDITOR'S LETTER BOX.

THE letter of A. B., on the large stamp duties paid on articles of clerkship to attorneys and solicitors, shall receive early attention.

F. W. may address "The Secretary of the Law Students' Society," at the Law Society's Hall, Chancery Lane, where a room is appropriated by the committee for the weekly meetings of the students or articulated clerks.

We thank M. W. for his courtesy in saving us trouble regarding his previous letter.

The Legal Observer,  
OR,  
JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 15, 1845.

———" Quod magis ad nos  
Pertinet, et necesse malum est, agitamus."

HONOR.

DIVORCE A VINCULO.

WE have repeatedly called attention to the law relating to divorce, and have expressed our opinion that some alteration is necessary. We are for equal laws for the rich and poor; and it is absurd to say that the law in this respect is equal. A hungry man, without a farthing in his pocket, might as well be told to satisfy himself at a magnificent feast, at a guinea per head, as to tell an injured husband, of the middle or lower ranks, that he may have redress for his wrongs by a bill in parliament. Mr. Swaby, the Registrar of the Admiralty Court, in his evidence before the select committee of the House of Lords, which sat in the last session to consider the bill for the better administration of justice in the Privy Council, said, that it appeared that even in an ordinary litigation, with moderate opposition, and where the witnesses are at hand, the expense of obtaining a definitive sentence of divorce *à mens et thoro* may reasonably amount to 1,700*l.*, and this merely to lay a foundation for the proceeding before parliament, and quite independently of the action at law. It is idle, therefore, to say that in this respect there is equal law for the rich and the poor. A divorce *à vinculo matrimonii* cannot be procured, it may be reasonably asserted, under 2,000*l.*; and does not this at once amount to a sentence of exclusion from the benefit of all but a limited class. But this is not all: this limited class which now enjoys it are, in most cases, the very persons who should be excluded. It is here that the worst cases of collusion exist; it is here that the most hideous form of

adultery is frequently protected, or at all events escapes adequate punishment. And why is this? Simply because the present tribunal for divorce has no adequate machinery for the investigation of truth. The jurisdiction of parliament is in this respect anything but satisfactory; it is a thing of shreds and patches; it possesses perhaps the worst fault in a judicial tribunal—a divided responsibility. The bill is passed in the Lords; a law lord may or may not be present; occasionally a hunt takes place through the purlieus of the house for the requisite number of peers; if any hurry or haste occur it is slurred over; the sentence is not final, it has yet to pass the Commons. Arrived there, the scandal no longer, it is true, exists of *viva voce* examination of the evidence at the bar of the house; for every divorce bill is referred to a select committee appointed for the purpose. But this committee has usually contented itself with the printed evidence taken by the Lords; it trusts, in fact, mainly to this: the whole proceeding is unsatisfactory, not to say farcical. If a sufficient sum can be collected to put this gigantic machinery in motion, the main object seems to be attained, and the great difficulty is over. Now this should not be so. It is for the public interest, as much to prevent improper divorces, as to facilitate, under certain restrictions and regulations, proper divorces. We submit that the whole system for granting divorces *à vinculo* is on a wrong foundation, and proceeds from a wrong motive, and that an alteration is necessary. We are glad, therefore, that Lord Brougham has brought the subject before the House of Lords.

The main difficulty appears to be, supposing this jurisdiction to be taken from parliament, where would you place it? And on this point we think we cannot do better than lay before our readers the remarks of a judicious writer in the February number of the *Law Review*, who appears to be well acquainted with the whole subject. "Some propose," says the reviewer, "the Judicial Committee of the Privy Council; others, the Ecclesiastical Courts of London."

"We prefer the judicial committee; because the transfer of the jurisdiction to that tribunal would involve a change less violent and safer. The privy council was formerly, and, to a certain extent, is still, ancillary to parliament. It is composed of the highest legal authorities. The masters of equity, the oracles of law, the heads of the ecclesiastical courts, and some even of the reverend prelates themselves, are there assembled. The course of proceeding in this high court is governed by the principles and maxims of the law of the land. The rules of evidence too are the same as those of the Queen's other courts; and when witnesses are examined, the examination is *viâ voce*. The judicial committee moreover has power to direct issues for trial at law *ad informandum conscientiam*, as in the Court of Chancery. And we apprehend the remedy of divorce *à vinculo* might well be granted upon bill and answer—a form of proceeding which was anciently the common course of the privy council. To give this jurisdiction to the judicial committee would only be reviving an ancient establishment: for the privy council throughout the Tudor reigns took cognisance of the higher description of causes matrimonial. Finally, the judicial committee is an open court—a *forum commune*. All professional men may practise before it; an advantage of unspeakable importance to litigants. For these reasons we think the experiment ought at all events to begin with the judicial committee."

The writer then goes into the mode of taking evidence adopted by the Ecclesiastical Courts:—

"Furthermore, their rules of evidence are peculiar, and in some material respects contrary to the law of the land. This is pointed out in his usual sarcastic way by Blackstone. 'One witness,' says he, 'if credible, is *sufficient* evidence to a jury of any single fact, although undoubtedly the concurrence of any two or more corroborates the proof. Yet our law considers that there are many transactions to which only one person is privy, and therefore does not *always* demand the testimony of two, as the civil law universally requires. *Unius responsio testis omnino non audiat*. To extricate itself out of which absurdity the modern practice of civil law courts has plunged itself into another. For as they do not allow a less

number than two witnesses to be *plena probatio*, they call the testimony of one, though never so clear and positive, *semi plena probatio* only, on which no sentence can be founded. To make, up, therefore, the necessary complement of witnesses when they have one only to any single fact, they admit the party himself (plaintiff or defendant) to be examined in his own behalf, and administer to him what is called the suppletory oath; and if his evidence happens to be in his own favour, this immediately converts the half proof into a whole one: by this ingenious device, satisfying the form of the Roman law, but acknowledging the superior reasonableness of the law of England, which permits one witness to be sufficient where no more are to be had; and to avoid all temptations to perjury, lays it down as an invariable rule, that *nemo testis esse debet in propria causa*. Cases of adultery are of all others the very cases in which a *penuria testium* is most likely to occur. To require two witnesses of facts almost necessarily secret is, in most cases, to ensure a denial of justice. Of this constant examples are to be found in the records of the ecclesiastical courts. But we shall content ourselves with referring shortly to a very recent case, that of *Evans v. Evans*, which came before Sir Herbert Jenner Fust for judgment, in the Arches' Court of Canterbury, on the 21st of November last. The suit was instituted by the husband against his wife for divorce by reason of adultery; and the facts were, that having suspected his dishonour, he one day on his return from shooting proceeded suddenly, accompanied by a female servant, to the room of his wife, whom they found in bed in the arms of her paramour. Against that person the husband in due time recovered a verdict at the Anglesea Assizes for 500*l.* damages. The evidence of adultery in the ecclesiastical court depended on the testimony of the female servant. The evidence had satisfied the jury in the action-at-law. But it did not satisfy the learned judge of the ecclesiastical court; who rested his decision, not on any objection to the conduct of the husband, which had been altogether blameless, nor on any doubt of the veracity of the witness, whose character was unimpeached,—but simply and solely on this ground, that the testimony of a single witness, however positive and distinct, did not of itself constitute that full degree of proof—that *plena probatio* required by the ecclesiastical court. He therefore held that Mr. Evans had failed in his case; and he accordingly dismissed Mrs. Evans from the suit. Mr. Evans may indeed appeal to the judicial committee of the privy council. But in the exercise of its appellate jurisdiction the judicial committee, when reviewing the sentences of the ecclesiastical courts, is itself governed by ecclesiastical law; so that an appeal on so clear a point could lead to no other result than an affirmance with costs. Mr. Evans, therefore, is precluded from all relief. One other word, and we have done. The only mode of taking evidence in the ecclesiastical courts is by commission and written deposition.

There is no *voir dire* examination of witnesses. This of itself is a sufficient objection to these tribunals; although Dr. R. Phillimore seems to think it their highest recommendation. We will not argue this question with him. The opinion of the profession has long been made up on it. But we desire our readers once for all to consider whether it is reasonable that a party, in one of the most trying predicaments of domestic life, should be obliged to forego the comfort of confiding in the friendly assistance of his own confidential solicitor, on whose honour and discretion, in all difficulties, he has perhaps for years relied? Why drive him to a stranger ignorant of his affairs, his plans in life, his connections, his interests, his resources? Yet this will be the consequence if the jurisdiction of divorce *à vinculo* be consigned to the narrow and exclusive precincts of Doctors' Commons. Why, moreover, should not an aggrieved husband or an injured wife have the privilege of selecting counsel from the bar at large? Why restrict the choice to a handful of civilians? The learning and ability of these gentlemen we have no wish to disparage. On the contrary, we readily admit the important services which in many instances they are capable of affording; and we desire to see them act frequently in concert and co-operation with their brethren of Westminster Hall. Who can doubt that in the trial of Queen Caroline, Dr. Lushington and Sir C. Robinson proved most valuable coadjutors? But, to indulge an extravagant supposition, let us for a moment imagine that the House of Lords had made an order in that case excluding all but civilians from the forensic argument appointed for hearing on the bill of pains and penalties, which in effect was a divorce bill. What would the authors of the prosecution and the unhappy princess who was the object of it have said to such a limitation,—compelling them to surrender their own chosen and peerless advocates, —to relinquish a Copley, a Brougham, and a Denman,—and to seek for substitutes in the gloomy vicinity of St. Paul's Churchyard?"

## SPEECHES FOR DEFENDANTS OR PRISONERS.

MR. EWART brought a subject of some interest to the profession before the House of Commons on Thursday, the 6th inst. He moved that it was expedient that inquiry should be made whether the ends of justice would not be better attained if the defendant's counsel, in civil, and the prisoner's counsel, in criminal cases, were enabled to address the jury, on the close of the evidence, for the prisoner or defendant. This motion elicited a speech from the Attorney-General, (who we are glad to find once more at his post,) who admitted there was some disadvantage in the pre-

sent practice. The matter was, with Mr. Ewart's consent, referred to the Criminal Law Commissioners. It was admitted that the practice was anomalous, one practice prevailing at quarter sessions and before committees of the House of Commons, and another at Nisi Prius.

## POINTS IN CRIMINAL LAW.

### ABDUCTION.

By stat. 9 Geo. 4, c. 31, s. 20, it is enacted, that any person who shall unlawfully take any unmarried girl under sixteen out of the possession and against the will of her father and mother, or other person having lawful charge of her, shall be guilty of a misdemeanor, and be liable to fine or imprisonment.

In the case of *Regina v. Meadows*, 1 C. & K. 399, A., a girl under sixteen, who was in service, was, as she was returning from an errand, asked by B. if she would go to London, as B.'s mother wanted a servant, and would give her 5*l.* wages. A. and B. went away together to Bilston, where both were found, and B. apprehended. And it was held by *Parke, B.*, that this was not such a taking or causing to be taken of A. as was sufficient to constitute the offence of abduction, under the 28th section of the stat. 9 Geo. 4, c. 31; and *semble*, (according to the reporter,) that a mere fraudulent decoying or enticement away of a girl under sixteen, is not a taking or causing to be taken, within that section.

In a more recent case, Mr. Serjeant *Atcherley*, who tried it, thus laid down the law: "In cases of this kind there must be a great variety of circumstances. Here you find a lad of eighteen, who runs away with a girl who is between fifteen and sixteen. There is no force and no fraud; and we find that he planted the ladder at a window, and she came down it to elope with him; and the rest of the case shows that this young girl, probably under some vague notion of marriage, is carried away to Reading, and thence to Brentford, and for three weeks cohabits with this person, and is thus ruined for life. By her appearance and her forwardness—for it was she that made the proposal to elope—the defendant might have taken her for more than sixteen; but that is no ground for defence, however it may be matter for mitigation. My opinion is, that if this girl was under sixteen, and the defendant knew her to be under the care of her father, and made a bargain with her to take her away, and did so, this is a case within the act of parliament that has been referred to, and you ought to find him guilty on this indictment." Verdict, guilty; sentence, a fine of 1*s.* Mr. Serjeant *Atcherley* afterwards said he had mentioned the case to the Lord Chief Justice *Tindal*, and he was of opinion that the direction to the jury was right. *Regina v. Robins*, 1 C. & K. 456.



## NOTES ON EQUITY.

## MORTGAGEE.

WHERE a mortgagee in possession has been paid the principal and interest before he files a bill to redeem, it is quite clear he will be charged with interest on all the sums he had received on account of rents and profits since he has been overpaid. See *Quarrell v. Beckford*, 1 Madd. 269; *Wilson v. Metcalfe*, 1 Russ. 530. This rule has been extended, in a late case, to a mortgagee in possession who becomes overpaid pending a suit to redeem. Sir L. Shadwell, V. C., said he had no authority to charge the defendant with interest prior to the date of the report, but ordered him to pay interest at 4 per cent. on the balance from that time, and an account to be taken of the sums subsequently received by him, and interest to be charged on those sums at the same rate from the time when they were received. *Lloyd v. Jones*, 12 Sim. 491.

## LEGACY. — ADEMPTION. — PAROLE EVIDENCE.

Where a parent or other person *in loco parentis*, bequeaths a legacy to a child or grandchild, and afterwards in his lifetime gives a portion, or makes a provision, for the same child or grandchild, without expressing it to be *in lieu of the legacy*,—if in such a case the portion so received, or the provision so made on marriage or otherwise, be equal to or exceed the amount of the legacy; if it be certain, and not merely contingent; if no other distinct object be pointed out; and if it be *ejusdem generis*; then it will be deemed a satisfaction of the legacy, or, as it is more properly expressed, it will be held to be an *ademption* of the legacy. If the portion or provision be less than the amount of the legacy, it will at all events be deemed a satisfaction *pro tanto*; and if the difference between the amounts be slight, it may be deemed a complete satisfaction or ademption. But if the difference be large and important; there the presumption of an intention of substituting the portion for the legacy will not be allowed to prevail. The ground of this doctrine is, that every such legacy is to be presumed to have been intended by the testator to be a portion for the child or grandchild, whether it be so designated or not; and if he afterwards advances the same sum upon the child's marriage, or on any other occasion, he does it to accomplish his original object; and under such circumstances it has been held that it ought to be deemed an intended satisfaction or ademption of the legacy, rather than a reiterated portion to the object of his bounty. Such is the undoubted doctrine of the court; although it has not escaped the censure of some judges

of the highest eminence—as Lord Thurlow\* and Lord Eldon;† both of whom have characterized it as harsh and artificial.

In the recent cases of *Kirk v. Eddowes*, 3 Hare, 509, the testator bequeathed 3,000*l.* to his daughter for life, with remainder to her children as she should appoint. Shortly after the date of his will, the testator gave her a sum of 500*l.*; and it was proved by evidence in the cause that a conversation had taken place between the testator and his said daughter on the occasion of this payment; from which conversation it plainly appeared that the 500*l.* was advanced towards, and as part of the daughter's portion. But then the question arose whether the verbal declarations or conversations of the testator were admissible in evidence to establish this position. After argument on both sides, Vice-Chancellor Wigram decided that the evidence was receivable. His Honour observed, that the advance of 500*l.* “was after the date of the will.” The transaction relating to this advance is not evidenced by any writing, and therefore the technical rule against admitting parole evidence to add to, or explain written instruments, does not here apply. The court then has to decide whether the transaction in question has effected a partial ademption of the legacy. In order to do this satisfactorily, the court must know exactly what the transaction really was. But the declarations of the testator are objected to as not evidence. Why should not these declarations be evidence? They are of the essence of the transaction. The evidence tendered does not touch the will. It proves only that a certain transaction, having a certain object, took place after the will was executed. It proves what that transaction was—and the court is simply to consider whether there is, or is not, thereby an ademption *pro tanto* of the bequest.‡ I cannot see any principle to warrant my rejecting the evidence in question; for, admitting as I do in the fullest manner, that parole evidence is not admissible to prove that a will was intended to have an effect not expressed in it, still I cannot, without departing from principle and overlooking authorities, reject evidence which goes to prove a transaction subsequent to and independent of the will—a transaction whereby it is clearly established that a partial ademption of this legacy was intended and accomplished.

\* *Grave v. Salisbury*, 1 Bro. C. C. 425.

† *Ex parte Pye*, 18 Ves. 151. But see *Hartop v. Whitmore*, 1 P. Wms. 682.

‡ This reasoning of the Vice-Chancellor is precisely that of Lord Hardwicke in *Rosewell v. Bennett*, 3 Atk. 77, where that great judge says:—“As this act of the testator after making his will is not a revocation of the will, but an ademption only of the legacy, I am of opinion the plaintiff ought to be let into this evidence, to show the testator's intention; and it has been done in several cases.”

MEMOIR OF LORD WYNFORD.

FROM various sources, and amongst others from information derived from a relation of the deceased, we are enabled to present our readers with an authentic memoir of the late Right Hon. Wm. Draper Best, Baron Wynford.\* He was born at Hasselbury Plucknutt, near Crewkerne, in the county of Somerset, on the 13th December, 1767. He was the son of Thomas Best, Esq.; and it is believed that the early name of the family was Basset, abbreviated, in progress of time, to Best. He was connected by marriage with Sir Fletcher Norton, formerly Speaker of the House of Commons, afterwards Lord Grantley, and descended from Sir William Chapple, one of the Judges of the Court of King's Bench. In the female line, he was allied to an ancestor of the great Earl of Chatham, and his mother was the daughter of Sir William Draper, so well known as the opponent of "Junius."

He received the rudiments of his education at Crewkerne School, and from thence, at the early age of fourteen, he proceeded to Wadham College, Oxford. It was intended, on his entering the university, that he should obtain a fellowship, with the view of entering the church; but after he had resided there for two years, he became entitled, by the death of a first cousin, to the remaining part of an estate the whole of which had once appertained to his family, and he then relinquished his intention of seeking for college preferment or entering the clerical profession.

After leaving Oxford he entered the Middle Temple, and was called to the bar on the 6th November, 1789, and went the Home Circuit.

He was an instance of an advocate's success without any previous preparation in oratorical experience; for, though a member of the Crown and Rolls Society, which was frequented by many students of the bar, he could never be prevailed on to speak. He first attracted notice in the cause of *Peppin v. Shakespeare*, the brief in which happened to be delivered to him in consequence of the absence of the gentleman for whom it was originally designed. The question turned on the rights of a lord of the manor in respect to the appro-

priation of wastes, and when he afterwards argued the point in the Court of King's Bench, Lord Kenyon paid many compliments to his talents and industry. After an eulogium so flattering to a young counsel he soon got into full practice, both in Westminster Hall and on the circuit.

In Hilary Term, 1800, he took the degree of Serjeant at Law, and chose for his motto *Libertas in Legibus*, from the principle of which, it has been truly said, he never departed. He soon advanced to the first rank in extent of practice, and received the honour of an appointment as one of the King's Serjeants in Easter Term, 1806. He was contemporary with Serjeants Cockell and Shepherd, and with them, on one side or other, was engaged in almost every cause in the Common Pleas, and he frequently took the lead in other courts.

In order of time, we may here notice the entrance of Mr. Serjeant Best into parliament, which took place at the general election in the year 1802, when he became member for Petersfield, and the following particulars are extracted from the publications of the time:—

On May 24, 1803, soon after the message from his Majesty relative to France had been delivered, Mr. Serjeant Best observed, 'That in his opinion, too much time had been occupied in discussing the papers before the house; for although it was admitted on all hands, that they contained abundant and legitimate causes for war, yet they were still discussing whether they should agree to the address to his Majesty, upon the justice of hostilities.'

"If he were asked, would he go to war for Malta? he would answer, 'No;' he would not go to war for Malta, or a much more extensive possession in the abstract; but it was the manner in which France demanded Malta; it was the disposition she had shown; it was the designs which she had openly avowed, that, in his opinion, justified this country in going to war. If the smallest spot of earth were demanded of us, in the manner, and under the circumstances that France demanded Malta, he would refuse it, because he would consider it as essentially connected with the safety and the interest of the British empire."

In July 1803, he opposed the Magistrates' Protection Bill; on which occasion he delivered his opinion at length. Some of the measures adopted towards the latter end of Mr. Addington's administration were also disapproved by him; and on the 18th of June 1804, we find his name in a minority of 222 to 264, on Mr. Pitt's Additional Defence Bill; he also divided with 106 to 313, on Mr. Grey's amendment to the address to the throne, on the Spanish war, on the 12th Feb. 1805.

\* See Wilson's Biographical Index to the House of Commons; Foss's Grandeur of the Law; Whishaw's Synopsis of the Bar, &c.

On the 8th of April 1805, we find him voting in conjunction with 217 members, who pronounced on the culpability of Viscount Melville. A few days after, he vindicated the conduct of the Commissioners for Naval Affairs; and on the 26th of the same month, he moved for certain papers relative to the sale of neutral ships, with a view to detect abuses supposed to be committed by Mr. Claude Scott, the agent, a member of that house, who had executed certain contracts for corn during the former administration of Mr. Pitt. These were ordered accordingly; and in reply to some justificatory observations on the part of the gentleman alluded to, the learned serjeant candidly remarked, "that he hoped the fact would turn out as stated; in which case, his informant would be called to the bar of the house, to be chastised for a practice which he did fear existed, namely, that of individuals misinstructing members of parliament on special grievances."

He next moved "for an account of all pensions granted by the crown, from the 1st of May 1804, to the 1st of April 1805; and an account of all augmentations of salaries by sign manual, letters patent, or warrant."

On May 22d, he moved for the appointment of a committee on the eleventh report of the naval commissioners, and in an able introductory speech, maintained that some of the fundamental laws of the constitution had been grossly violated, as appeared from the facts disclosed in that important paper. Among other matters of serious import, he stated, that money had been raised by the executive government, without the consent of parliament, by means of exchequer bills.

The member for Petersfield also introduced, and carried through parliament, a bill for improving the livings of the clergy in the metropolis, who signified their gratitude and approbation, by the donation of a piece of plate with a suitable inscription."

Such was the career in parliament of Mr. Serjeant Best; and we shall now advert to the professional appointments which he received.

In March 1809 he was elected Recorder of Guilford. In Michaelmas Vacation, 1813, he was appointed Attorney-General to the Prince of Wales. In Hilary Term, 1818, he became Chief Justice of Chester; and in Michaelmas Vacation in the same year he was promoted to the judicial bench, on the elevation of Mr. Justice Abbott to the head of the King's Bench. The honour of knighthood was, as usual, conferred on the learned judge.

In Hilary Vacation, 1824, he succeeded Lord Gifford as Chief Justice of the Common Pleas, and continued in that high office till June 1829, when he was succeeded by the present excellent Chief Justice, Sir Nicholas Tindal.

The office of judge had been kindly

pressed on him by the Prince Regent, when his health was scarcely equal to the arduous duty of a leading counsel. He was also the intimate friend and confidential adviser, on many important occasions, of the Duke of Clarence, afterwards King William the Fourth, and of the present King of Hanover.

It has been well said in *The Times* that

"The learning and talents which secured his success at the bar did not desert him when he rose to the bench. In those days, as now, a very great proportion of the business of Westminster Hall was attracted to the Court of Common Pleas; and, sitting *in banco*, Chief Justice Best was not surpassed by many of his contemporaries, and probably by no great number of his learned predecessors; but there are those who think that at *nisi prius* his great ability in eliciting truth became most apparent; it was there, likewise, that persons not learned in the law could best appreciate the rapidity with which he separated the material from the unimportant parts of a case, as well as the perspicuity and brevity with which, in the course of an hour, he would sum up the business of an entire day."

He was raised to the peerage on the 9th June, 1829, by the title of Baron Wynford, of Wynford Eagle, Dorsetshire.<sup>b</sup> From the same journal, we avail ourselves of the following account of his lordship's exertions in the upper house.

"In the year 1824 he was sworn a member of the privy council, and appointed a deputy-speaker of the House of Lords. His elevation to the hereditary branch of the legislature has often been attributed to a variety of causes;—for example, to the influence of the King of Hanover; to the desire of inducing the learned judge to resign in order to make room for the present Chief Justice of the Common Pleas; to anything rather than the obvious and avowed reason—the necessity of conferring on a retiring judge of his eminence some distinguished mark of royal approbation; besides that an addition to the law lords was then required by the state of the appeals before the upper house. Till age and infirmity pressed hard upon him, his lordship always took his due proportion of judicial business both in the Privy Council and the House of Lords.

"Although Lord Wynford almost always acted with the Conservatives, yet he never entirely surrendered his opinions to any party. On the Reform Bill he always opposed the second reading, for he appeared to think that

<sup>b</sup> He derived his title of Wynford from the old estate of Wynfrith Eagle, in Dorsetshire, formerly the property of the Sydenhams, which he purchased about the year 1810.

the bills brought to the House of Lords from the Commons were more likely to increase than diminish bribery, and, although they might get rid of some close boroughs, they would in a short time create many more. But when the last of those bills was read a second time, he pressed the heads of the Conservative party to consent to the passing of schedule A; to divide the representatives of the boroughs it included between the counties and large towns; to enlarge the towns in schedule B, so that none of them should have less than 1,000 constituents; and to extend them beyond that number if a majority of the voters were tenants of one man, as well as to increase the qualification for voting in proportion to the amount of the population of towns, on the ground that the inhabitants of houses rated at 10*l.* per annum were not sufficient to secure a respectable class of voters in a large town, although quite sufficient in a smaller one. It must be recollected, that after Lord Grey's postponement of the committee on the bill, many Conservative peers withdrew from the house, and would offer no further opposition to it, apprehensive that there would be an immense creation of peers, or that dangerous results would occur, if the ministry were prevented from carrying their bill in the shape they wished. Lord Wynford would not withdraw from the house, although pressed to do so by the highest authority; but he found it was in vain to attempt his amendments. He, however, continued his attendance in the house, and endeavoured to make every amendment that he could hope to carry."

His family were anciently of considerable station, and the remainder of large estates devolved upon him, which had been enjoyed by his ancestors for many centuries.

He married Mary Anne, the second daughter of Jerome Knapp, Esq., a Benchman of the Middle Temple. He has left four surviving children: William, the eldest, was called to the bar, but never practised; he is married, and has several children. Samuel, the second son, is in the church, and has a family; he married a daughter of Mr. Justice Burroughs. Thomas, a captain in the royal navy, married a daughter of Lord Kenyon, and has no family. Grace, the eldest daughter, married Philip Godsall, Esq., now of Iscoid, Flintshire, and has a family. There was also a daughter named Ann, who married Captain Byam Martin, R.N., and died, leaving two infants.

Lord Wynford died at his seat called Leasons, in Kent, on Monday, the 3rd March, having attained his 77th year in December last.

So assiduous was he in his duties whilst

on the bench, that his life has frequently been hazarded by his sitting in court when he should have been confined to his room. On one occasion, his carriage was at the door of his house in Bedford Square, to take him to the Warwick Assizes, when his medical attendant accidentally visited him to take leave, and found him in such a state of illness that he immediately proceeded to the Secretary of State and obtained authority for his lordship's remaining in London: it was stated, that had he not been thus prevented, he would have entered Warwick a corpse.

The kindness of his heart was strongly marked in his countenance; and to an eye of the most extraordinary brilliancy he added a voice of unusual melody. No judge ever presumed less on his elevation than Lord Wynford; to personal vanity he was a perfect stranger; and in his earliest days he could never have shown more courtesy to the solicitors and attorneys of his profession than in his latest years, and he spoke of them as friends in whom "he would never hesitate to trust his fortune, his family, and his honour."

To this we add the following just tribute to the memory of the deceased, extracted from an able writer in *The Times*:—

"Lord Wynford was a man of many and varied accomplishments—a scholar, an orator, and a lawyer; a man as highly distinguished for his conversational as for his parliamentary talents. He was a man of sudden impulses, but of kindly feelings; of very warm temper, but in general of most amiable deportment. It is no flattery to say of him, that he was an able advocate, an upright though hasty judge, in many respects an enlightened senator, and most certainly an accomplished gentleman. Though endowed with great intellectual power, he never trampled on a fallen opponent. No man better understood or seemed more heartily to love that of which Englishmen are justly proud—their maintenance of 'fair play.' Easily excited to indignation against crime, he always seemed to regard the offender with feelings of deep compassion. The bench where he presided was one of justice, but it was also one of mercy.

"Until after he had passed his 74th year he continued to take an active part in the business of the House of Lords, but the weight of declining years warned him to seek that repose which befitted his advanced age, and to enjoy that leisure to which, by a long and laborious life, he had become honourably entitled. Full of years and honours, he has left behind him an example which many men of his profession may endeavour to imitate, but which very few can hope to excel."

## NEW BILLS IN PARLIAMENT.

## ROMAN CATHOLICS' RELIEF.

THIS is a bill for the further repeal of enactments imposing pains and penalties upon her Majesty's Roman Catholic subjects on account of their religion. It recites, that by 7 & 8 Vict. c. 102, the several penal acts and parts of penal acts therein mentioned or specified were from and after the passing of that act repealed: And that notwithstanding the provisions of such act, her Majesty's Roman Catholic subjects do still continue to be liable for or on account of their religious belief or profession, to sundry punishments, pains, penalties and disabilities, ordained and enacted by certain acts passed by the parliament of England, the parliament of Great Britain and the parliament of Great Britain and Ireland, respectively, and to which punishments, pains, penalties and disabilities none other of her Majesty's subjects are liable: And that it is expedient that all such punishments, pains and penalties as aforesaid shall be for ever repealed and taken away: And that it is likewise expedient that all such and so many of the aforesaid disabilities shall be in like manner repealed and taken away, as do not in any wise relate to the holding of offices, judicial, civil, collegiate or ecclesiastical, or to the presenting to ecclesiastical benefices, or as do not in any other matter tend to the better securing and strengthening the present church establishment, and the present civil government, and the settlement of property within this realm. The bill therefore proposes to repeal all the provisions in former acts relating to penalties and disabilities of Roman Catholics, viz:—1 Eliz. c. 1; 5 Eliz. c. 1; 13 Eliz. c. 2; 1 Jac. 1, c. 4; 3 Jac. 1, c. 4; 13 & 14 Car. 2, c. 4; 25 Car. 2, c. 2; 30 Car. 2, st. 2, c. 1; 11 & 12 W. 3, c. 4; 18 Geo. 3, c. 60; 31 Geo. 3, c. 32; 10 Geo. 4, c. 7.

## LAWS RELATING TO PAROCHIAL SETTLEMENT, AND REMOVAL OF THE POOR.

The following is the scope of this bill:—

I. *Repeals.*

Section 1. Repeal of so much of former acts of parliament as relate to settlement in parishes, and to the removal of the poor, whether English, Scotch or Irish, or of the Isles of Man, Scilly, Jersey or Guernsey.

II. *Settlement.*

2. Persons born before the act to retain their settlement.

3. Other settlements declared; namely, 1st; birth settlement; or, 2nd, father's settlement; or, 3rd, mother's settlement. No settlement, to be derived from grandfather, grandmother or more remote ancestor.

4. Place of birth proved by register of birth or baptism.

5. Proviso, that children born in union work-

houses shall be settled where their mothers are chargeable: children born in district asylums, hospitals, prisons, &c., or while their mothers are under orders of removal, shall not have a birth settlement, but shall take their parent's settlement.

Replaces, with modifications, 9 Geo. 1, c. 7, s. 4, proviso; 13 Geo. 3, c. 82, s. 5; 20 Geo. 3, c. 36, s. 2; 54 Geo. 3, c. 17, s. 2, 3; 9 Geo. 4, c. 40, s. 49; and the effect of, Dalton, 168, and of the cases *R. v. Astley*, 2 Bott., 17; *Suckley v. Whitehorn*, 2 Bott. 3.

III. *Chargeability.*

6. Declaration, that unsettled persons are to be relieved at the charge of the "parish" where they are destitute, as if they were settled there, until they are lawfully removed, or their destination there is lawfully at an end.

IV. *Removal.*

7. Persons chargeable to a "parish" in which they are not settled, declared liable to be removed to the parishes of their settlement, with a reservation in cases of—

1. Married women. Such women are not to be removed from their husbands.

2. Legitimate children. Such children are not to be removed from their father's parish.

3. Legitimate and bastard children. Such children are not to be removed from their mothers.

4. Widows and their families. These are not to be removable for a year after the husband's death.

5. Widows. They are not to be removed from the place of their husband's settlement and death.

6. Persons chargeable through sickness. They are not to be removed until relieved forty days.

8. Declaration, that, except wives and children who are before made removable to the husband's or parent's parish, and persons removable to Scotland, Ireland, &c., no person shall be removable to any other parish than that in which they are settled.

9. Power to overseers to admit settlements, and agree to amicable removals.

10. Summons of persons liable to be removed; their examination; the warrant for their removal. Proviso for the examination of persons who cannot attend the summons.

Replaces 13 & 14 Car. 2, c. 12, s. 1, as to power to remove; as to complaint to one justice, *R. v. Westwood*, 2 Bott. 782; summons, *R. v. Wykes*, 2 Bott. 818; hearing by two justices, *ib.*; examination of infirm persons, 49 Geo. 3, c. 124, s. 4; and of prisoners, 59 Geo. 3, c. 12, s. 28.

11. No removal to be made until after forty days' notice, unless the removal be previously submitted to. In case of appeal, the removal not to be made until such an appeal is ended.

Replaces 4 & 5 Will. 4, c. 76, s. 79.

12. Overseers, or persons employed by them, may execute the warrant of removal.

Replaces 54 Geo. 3, c. 170, s. 10.

13. Persons procuring removals without warrants made subject to penalties.

14. Delivery of paupers under warrants of removal, at the workhouse of a parish or union, to be regarded as delivery to the overseers.

15. Suspension of the removal; recovery of the charges incurred by such suspension; appeal where such charges exceed ten pounds.

Replaces 25 Geo. 3, c. 101; as to sick persons, *R. v. Everdon*, 2 Bott., 878; and as to the whole family, 49 Geo. 3, c. 124, s. 3; as to justices' jurisdiction, 49 Geo. 3, c. 124, s. 1; as to notice of the warrant and suspension, 4 & 5 Will. 4, c. 76, s. 84.

16. Overseers may abandon a warrant of removal, paying the costs caused to the other party.

17. The clerk of the justices to transmit a duplicate of every warrant of removal and the original depositions to the clerk of the peace.

18. The clerk of the peace, on application, to furnish copies to the overseers of the parish to which the removal is directed to be made.

#### V.—*Appeal against warrant of removal.*

19. The parish aggrieved by a warrant of removal may appeal, giving notice of the grounds of their appeal. Appeal to be respited only on affidavit of special circumstances. Warrants of removal made before the passing of this act may still be appealed against, as if the act had not been passed.

Replaces 13 & 14 Car. 2, c. 12, s. 2, and 3 Will. 4, c. 11, s. 10; and as to statement of periods of appeal, 4 & 5 Will. 4, c. 76, s. 81.

20. Overseers may have access to the pauper touching his settlement.

Replaces 4 & 5 Will. 4, c. 76, s. 80.

21. Quarter sessions held fourteen days after notice of appeal, to hear the appeal, no grounds to be gone into, but such as have been set forth in the respondents' and appellants' statements.

Replaces 8 & 9 Will. 3, c. 30, s. 6, giving, however, jurisdiction to sessions of places, not counties; restriction to the grounds of removal and appeal, 4 & 5 Will. 4, c. 76, s. 81.

22. On the trial of the appeal, the duplicate of the warrant, and the original depositions transmitted to the clerk of the peace, may be referred to for certain purposes.

23. Costs incurred by reason of notice of removal, or of appeal, and costs of trial, and costs caused by statements of frivolous or vexatious grounds of removal or appeal, to be awarded and certified by the court; recovery of such costs.

Replaces 8 & 9 Will. 3, c. 30, s. 3, and 4 & 5 Will. 4, c. 76, s. 82.

24. Costs may be taxed by the proper officer at any time, although the court be not sitting.

*See Regina v. Long*, 1 Q. B. 740.

#### VI. *Maintenance of paupers under warrants of removal and during appeal.*

25. The cost of relief and maintenance of persons under warrant of removal incurred

from the time that notice of chargeability was sent, till the time when the warrant might lawfully be executed, to be repaid to the parish. Proviso saving the provisions in clause 15, respecting suspended warrants.

Replaces 4 & 5 Will. 4, c. 76, s. 84.

#### VII. *Service of notices.*

26. Notices of removal, appeal, &c. may be sent by post.

#### VIII. *Removal of poor born in Scotland, Ireland, and the islands of Man, Scilly, Jersey and Guernsey.*

27. Natives of Scotland, Ireland, and the islands of Man, Scilly, Jersey and Guernsey, not settled in England, may be removed to the places of their birth.

Replaces, as to natives of Scotland, Ireland, Man and Scilly, 3 & 4 Will. 4, c. 40, s. 2; of Jersey and Guernsey, 11 Geo. 4, c. 5, s. 2.

28. Justices in quarter sessions to make regulations for such removals.

Replaces 3 & 4 Will. 4, c. 40, s. 3 & 4.

29. The expenses incurred by parishes in such removals to be repaid out of county rates.

Replaces 3 & 4 Will. 4, c. 40, s. 5, with addition of natives of Jersey and Guernsey.

30. Or in London, by the Chamberlain of the City, and levied by a separate rate.

Replaces 3 & 4 Will. 4, c. 40, s. 6.

31. And in other cities and places not contributing to a county rate, by a general rate.

Replaces 3 & 4 Will. 4, c. 40, s. 7.

32. Guardians of unions in Ireland, and the heritors and kirk session or borough magistrates in Scotland, may appeal against such warrants. Removing parish may abandon its warrant, on payment of all costs incurred, including those of sending the pauper back to such parish.

#### IX.—*Constitution of Unions for Settlement.*

33. Poor Law Commissioners to declare unions for settlement.

34. Commissioners may in certain cases delay declaration of any union for the purposes of settlement.

35. Commissioners may declare unions under local acts to be unions for settlement.

36. Unions for settlement to be as one parish for settlement and removal.

37. Declaration of such unions to be notified to clerks of the peace, and published in the Gazette.

38. Guardians and their officers to proceed in matters of settlement and removal.

39. Guardians to take up such proceedings commenced before this act.

40. Commissioners to declare the averages of such unions.

41. Proviso for cases where monies have been irregularly applied in relief of the poor.

42. After the declaration of averages, the expenses of the union to be charged on the respective parishes according to such averages.

43. Overseers to continue to relieve in stud-

den and urgent cases. Such relief to be charged to the respective parishes.

44. Proviso for the repayment of loans, already partly discharged, but in different proportions by different parishes.

45. Certain penalties for offences against parishes extended to unions for settlement.

X.—*Guardians of parishes invested with powers for removal of poor persons.*

46. Boards of guardians of single parishes may act in matters relating to the settlement and removal of the poor.

XI.—*Construction and limitation of the act.*

47. This act to be construed as one act with the Poor Law Amendment Acts.

48. Forms set forth in the schedule to be sufficient in law, in proceedings under this act.

49. The act limited to England and Wales.

50. The act may be amended this session.

## LAW OF COSTS.

*Panton v. Labertouche*, 1 Phil. 265; *Lantour v. Holcombe*, 1 Phil. 262.

### SECURITY FOR COSTS WHERE THE PLAINTIFF IS ABROAD.

WHERE the plaintiff is out of the country he will be required to give security for costs. Now, in the first of the above cases it has been determined by the *Lord Chancellor* that the party's solicitor cannot be the surety. In the court of common law this is made the subject of an express regulation. The *Lord Chancellor* said, he thought the practice of the solicitors in the cause becoming sureties for costs was improper, and that the rule at law being founded upon sound policy, ought, therefore, to prevail in courts of equity, and his lordship made an order accordingly.

But after security has been given, the surety may be overtaken by insolvency. In such a state of circumstances, fresh security must be procured if applied for within a reasonable time. In the second of the above cases, after a decree dismissing the bill with costs, it appeared that the surety had become bankrupt. The plaintiff, nevertheless, although still in foreign parts, presented a petition of rehearing; whereupon the defendant moved that he might be ordered to give better security for the costs, or that the appeal might be stayed.

The *Lord Chancellor* said, "He should order the plaintiff to find a new security within fourteen days. The delay, however, in making the application, had been such that he did not think he should be justified in staying the hearing of the appeal, the briefs having been delivered and counsel instructed before the motion was made. He would, therefore, hear the appeal, and it would be for him to consider, when he had heard it, what he would do in case the security should not in the meantime have been perfected.

## RULES AND ORDERS MADE BY THE COURT OF BANKRUPTCY.

(Concluded from p. 365, ante.)

No. 4.

*Temporary protection from arrest*, 7 & 8 Vict. c. 70.

In the Court of Bankruptcy,

London, the            day of            184 .

Whereas

a debtor unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the            day of            with the concurrence of one third in number and value of his creditors, present his petition to this honourable court, under the provisions of the statute passed in the parliament holden in the seventh and eighth years of the reign of her present Majesty Queen Victoria, intituled "An act for facilitating arrangements between Debtors and Creditors." I, one of the Commissioners of her Majesty's Court of Bankruptcy, having examined into the matter of the said petition in manner directed by the said act, and being satisfied thereupon of the several matters required by the said act, do hereby direct that a meeting of all the creditors of such petitioning debtor be convened at            on the            day of            at            o'clock in the            noon. And I appoint            an official assignee of this court president of such meeting, to preside thereat, and report the resolutions thereof to me. And I do hereby order that the said            shall be protected and free from arrest, pursuant to the terms of the said statute, from the date hereof until the            day of            (4)

Commissioner.

In the Court of Bankruptcy.

I, one of the Commissioners of her Majesty's Court of Bankruptcy authorised to act in the matter of the within-mentioned petition, do hereby extend the protection of the said            till the            day of            Commissioner.

In the Court of Bankruptcy.

I, one of the Commissioners of Her Majesty's Court of Bankruptcy authorised to act in

\* Or "Registrar," or "one of the principal creditors of the said petitioner." See the act, sect. 3.

<sup>d</sup> If any limitation or condition to the protection, insert here. See the act, sect. 7.

the matter of the within-mentioned petition, do hereby extend the protection of the said  
till the                      day of  
   Commissioner.

In the Court of Bankruptcy.

I, one of the Commissioners of her Majesty's Court of Bankruptcy authorised to act in the matter of the within-mentioned petition, do hereby extend the protection of the said  
till the                      day of  
   Commissioner.

No. 5.

*First notice to creditors, 7 & 8 Vict. c. 70.*

Take notice, that  
has presented a petition to her Majesty's Court of Bankruptcy, praying that a certain proposal set forth in his petition should be carried into effect under the superintendence and control of the said court; and that  
one of the commissioners of the said court, having examined into the matter of the said petition, has directed that a meeting of all the creditors of the said  
should be convened at  
at which meeting  
is to preside.

You are returned by the said  
as a creditor for the sum of £

A copy of the petition is lodged with the said  
at his  
where it is open for your inspection between the hours of                      and                      daily.

Should it be inconvenient to you to attend the said meeting, you can appoint any person by writing to be your agent to vote at such meeting.

Messenger.

TERMS OF PROPOSAL.

[Copy the terms from the petition.]

No. 6.

*Second notice to creditors, 7 & 8 Vict. c. 70.*

Take notice, that  
having presented a petition to her Majesty's Court of Bankruptcy, praying that a certain proposal set forth in his petition should be carried into effect under the superintendence and control of the said court, and  
one of the commissioners of the said court, having examined into the matter of the said petition, directed that a meeting of all the creditors of the said  
should be convened at  
at which meeting  
was to preside; and such meeting having been

duly held, and the proposal of the said  
which now lies for inspection  
at                      and  
the terms of which are hereunder stated having been assented to by the requisite majority of the creditors then present, a second meeting of creditors has been appointed to be held at  
pursuant to the  
statute, for the purpose of the creditors at such second meeting, or three fifths in number and value of all the creditors then present, or nine tenths in value, or nine tenths in number whose debts exceed 20l., considering the propriety of agreeing to accept such arrangement or composition as was assented to at the said first meeting of creditors.

Messenger.

TERMS OF PROPOSAL.

[Copy the terms from the petition.]

No. 7.

*Certificate of the filing of resolution or agreement for compromise, confirmed by the commissioner, and protection from arrest endorsed thereon, 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy.

London,                      day of                      184 .

Whereas

of                      a debtor, unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the                      day of                      with the concurrence of one third in number and value of his creditors, present his petition to this honourable court, pursuant to an act passed in the parliament holden in the seventh and eighth years of the reign of her present Majesty Queen Victoria, intitled "An act for facilitating arrangements between debtors and creditors:" And whereas the commissioner appointed to examine into the matter of the said petition was satisfied of the truth of the several matters alleged in such petition, and that the said

was entitled to the benefit of the said act: And whereas such meetings of creditors as by the said act are required have been duly held, and certain resolutions or agreements have been made, which I, the commissioner, acting in the matter of the said petition, think reasonable and proper to be executed under the direction of this court, and have therefore caused the same to be filed and entered of record therein, and do hereby certify the same.

Commissioner.

Registrar.

The within-named  
is hereby protected from arrest at the

\* Or "a modification of the proposal of he said                      " as the case may be.



suit of any person being a creditor at the date of the within-mentioned petition, and having had such notice as by the within-mentioned act is required, until the day of 184, provided that this protection shall not be valid in favour of the said if he shall be proved to have been about to abscond beyond the jurisdiction of this court, or if he has concealed or is concealing any part of his estate and effects, nor against any creditor whose debt has been contracted by reason of any manner of fraud or breach of trust.

Commissioner.

No. 8.

*Certificate to trustee, 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy.

London, 184.

Whereas

of a debtor, unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the day of

with the concurrence of one third in number and value of his creditors, present his petition to this honourable court, under the provisions of the statute made and passed in the parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled "An act for facilitating arrangements between Debtors and Creditors," praying that a certain proposal therein contained should be carried into effect, under the superintendence and control of the said court; and the said petition has been duly filed in court: And whereas

one of the commissioners of the court acting in the matter of the said petition, caused certain meetings of the creditors of the said to be held,

pursuant to the said act: And whereas a certain resolution or agreement was duly assented to at such meetings of creditors, which the said commissioner, thinking the same to be reasonable and proper to be executed under the direction of the said court, caused to be filed and entered of record therein: And whereas the said resolution or agreement has been fully carried into effect, and a meeting of the creditors of the said

has this day been held before me, the commissioner acting in the matter of the said petition, and I am satisfied that

the trustee appointed to carry the said resolution or agreement into effect, has fully performed his trust, I hereby certify the same, under my hand and seal, this day of 184.

Commissioner.

No. 9.

*Certificate to petitioning debtor, 7 & 8 Vict. c. 70.*

In the Court of Bankruptcy.

London, 184.

Whereas

a debtor unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the Day of

with the concurrence of one third in number and value of his creditors, present his petition to this honourable court, under the provisions of the statute passed in the parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled "An act for facilitating arrangements between Debtors and Creditors," praying that a certain proposal therein contained, or such modification thereof as by the majority of his creditors might be determined, should be carried into effect, under the superintendence and control of the said court; and the said petition has been duly filed in court: And whereas

one of the commissioners of the said court acting in the matter of the said petition, caused such meetings of the creditors of the said

to be held as are directed by the said act: And whereas a certain resolution or agreement was duly assented to at such meetings of creditors, which the said commissioner, thinking to be reasonable and proper to be executed under the direction of the said court, caused to be filed and entered of record therein: And whereas the said resolution or agreement has been fully carried into effect, and a meeting of the creditors of the said

has this day been held before me, the commissioner acting in the matter of the said petition, and I am satisfied that the trustee appointed to carry the said resolution or agreement into effect, has fully performed his trust, I hereby certify the several matters aforesaid, under my hand and seal, this day of 184.

Commissioner.

## THE ATTORNEYS' CERTIFICATE DUTY.

AMONGST the measures adopted for effecting a repeal or reduction of this tax, we may mention that, besides petitions from several of the provincial law societies, the Incorporated Law Society, on the 22nd of February, affixed the common seal of the society to a petition containing the following statements:—

"That by the act 25 Geo. 3, c. 80, for granting duties on certificates to be taken out by solicitors, attorneys, and others, every attorney, solicitor, and proctor was required to take out an annual certificate on which, if he resided in

London or Westminster, or within the Bills of Mortality, there was charged a stamp duty of 5*l.*, and if he resided in any other part of Great Britain, a stamp duty of 3*l.*

"That such annual certificate duties have by various acts been increased, and ultimately, in 1815, by the 55 Geo. 3, c. 184, the following annual duties were imposed upon every attorney, solicitor, and proctor:

- "On those practising within the limits of the twopenny post, who have been admitted for three years or upwards . . . £12
- "On those not admitted so long . . . 6
- "On those residing elsewhere, who have been admitted three years . . . 8
- "On those not admitted so long . . . 4

"That by the last-mentioned act a stamp of 120*l.* is also charged upon all articles of clerkship to an attorney, solicitor, or proctor, and a further duty of 25*l.* upon his admission.

"That by a return made to your honourable house by the registrar at the Stamp Office, bearing date the 22nd May, 1833, the number of attorneys, solicitors, and proctors who paid the stamp duties for their certificates from Easter Term 1819 to Easter Term 1820, was 6,764, and the amount received for such duties was 57,646*l.*; and from Easter Term 1832 to Easter Term 1833 the number of certificated attorneys, solicitors and proctors was 9,221, and the sum received for certificates, 79,006*l.*

"That the number of certificates issued by the registrar of attorneys and solicitors appointed by the 6 & 7 Vict. c. 73, between the 15th November, 1843, and the 15th November, 1844, was 9,901, and the amount of certificate duty paid thereon in that year was 90,000*l.*, or thereabouts.

"That it appears by a return made to your honourable house, pursuant to an order dated 6th June, 1833, that the duties on 540 articles of clerkship to attorneys and solicitors received between Easter Term 1832 and Easter Term 1833 amounted to 64,800*l.*

"That such duties since that time have increased in proportion to the number of certificates issued.

"That the annual sum of 9,000*l.*, or thereabouts, is also paid on the admission of attorneys, solicitors, and proctors into the superior courts.

"That the stamp duties so paid for articles of clerkship, admissions, and certificate duty, amount to the sum of 170,000*l.* annually.

"That no profession except that of your petitioners is charged with similar stamp duties, nor are the same nor any annual stamp duties imposed on the higher branch of the legal profession.

"That such duties are not founded on any just principle of taxation, and are partially and unequally borne."

To this petition we may add the following letters on the subject:—

A Correspondent (P. R. A.) states from an authority, whose accuracy we doubt, that nothing will be done with the certificate duty

this session, though agitation may be serviceable against next year. But why (says our correspondent) continue a system of oppression and breach of contract another year? Why are a number of individuals and families, who can hardly live, to be cruelly and unjustly treated for another twelve months? There used to be some attorneys in parliament, are there none now? Can no one be found to call the attention of the legislature to a flagrant injustice? Could not a deputation wait on some member of parliament? Surely Sir Robert Peel, who gives audience to traders of all descriptions, will favour the attorneys with half an hour of his time, and can anything be more easy than to show him, not only that the tax is in itself wrong, but that it is in fact unnecessary? and if he really wants the 150,000*l.* per annum, it may be got in a dozen different ways by a duty of one shilling on every action at law or suit in chancery, or on certain parts of such actions or suits, as may be determined on.

Besides, the state having taken the money of the solicitors on the faith of their business continuing, has broken that contract, and is bound to make compensation as much as to a taxing-master or any compensated officer who paid money for his place to individuals, whereas we have paid it to our country. The abolition of the certificate duty will be a mere instalment.

I am a member of the legal profession, but for reasons not necessary to be stated, am compelled to undertake the duties of a managing clerk at a salary of 160*l.* per annum, and in consequence have to pay 4*l.* 16*s.* towards the income tax, which, in addition to my certificate duty 8*l.*, makes my contribution to the revenue 12*l.* 16*s.* I am obliged to assume a degree of respectability, and I leave it for your readers to judge whether, as regards myself and others similarly circumstanced, the certificate duty is an equitable tax or not.

OMEGA.

#### STAMP DUTY ON ARTICLES OF CLERKSHIP.

SIR,—I have waited hitherto in the hope that, amongst the many letters addressed to you on the subject of the stamp duties to which the profession are peculiarly subject, some abler pen than mine would have so far deviated from what appears to be the beaten track of complaint, as to have touched upon one which I humbly conceive to be far worse in its principle and more onerous than the annual certificate duty. Need I say that I refer to the duty on the articles of clerkship? which is a burden imposed solely on article'd clerks to solicitors. In no other profession or business is a stamp requisite which has no reference to the amount of premium. This is a position which cannot with truth be taken against the certificate duty, many other professions and businesses requiring an annual stamped license, and some of them

of much larger amount; for instance, bankers, auctioneers, &c.\*

It will no doubt be objected, that such a duty as that on articles of clerkship is requisite as a means of keeping the profession select and preventing improper persons from entering it. The necessity of such check I admit; but I conceive it is put on in the wrong place. How many parents are there who have paid this odious tax, in addition to a heavy premium with their sons, and then, from death or other

causes, have found it all lost money. And again, how many are there who are not admitted for years after the expiration of their articles, and to whom the bare interest of the money might be an object. What, therefore, I would propose is, to transfer the 120*l.* from the articles to the admission; and, if considered requisite for the purpose of revenue, charge the articles with the present admission duty. This I apprehend will be quite a sufficient check on too needy a person entering the profession, while it will prevent the glaring injustice of compelling a person to pay an enormous stamp duty to qualify him for a profession he for years cannot, and may never, enter.

A. B.

## CANDIDATES WHO PASSED THE EXAMINATION.

HILARY TERM, 1845.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Adams, Llewlyn . . . . .	Joseph Piers, Ruthin
Austin, Isaac J. Estrange Southgate . . . . .	John Peter Fearon, 1, Crown Office Row, Inner Temple
Bonnor, George . . . . .	John Hemming, Weymouth
Brandt, Charles Henry . . . . .	Benjamin Bonnor, Gloucester
Buttery, John Hopkinson . . . . .	Edward Washbourn, Gloucester
Calder, Edward . . . . .	Henry Charlewood, Manchester
Carnochan, Thomas Harsley . . . . .	John Buttery, Nottingham
	Luke Thompson, York
	Frederick Hawkeley Cartwright Bawtry, the younger, York
Cornock, Thomas Morris . . . . .	Charles Bell, 36, Bedford Row
	William Gresham, 3, Castle Street, Holborn
	Joseph Benson, Gray's Inn Square
	Daniel Cornthwaite, 14, Old Jewry Chambers
Corser, Edward . . . . .	Henry Corser, Stourbridge
Croome, John Wise . . . . .	Robert Wilton, Gloucester
Cunningham, Charles, the younger . . . . .	Charles Williams, 19, Ely Place, Holborn
	John Galsworthy, 19, Ely Place
Davenport, Frank Baddeley . . . . .	William Harding, of Burslem
Domville, William Henry . . . . .	Henry Denton, Lincoln's Inn
Dixon, William . . . . .	Robert Maugham, 100, Chancery Lane
Dryden, Erasmus Henry . . . . .	William Dryden, Kingston-upon-Hull
Dunn, William Laidler . . . . .	John Anderson Pybus, Newcastle-upon-Tyne
Fendall, Thomas Halcott . . . . .	Philip Reeve, Lincoln's Inn
Frere, Edward Daniel . . . . .	John George Smith, Crediton
	George Concanen, 5, Lincoln's-Inn-Fields
Gardner, Robert . . . . .	Arthur Haymes, Leamington Priors
	Thomas William Capron, Savile Place, New Burlington Street
George William Griffith . . . . .	Thomas George, Cardegan
Goater, Thomas . . . . .	William Henry Moberly, Southampton
Harrison, William Frederick . . . . .	Robert Wilson, 1, Copthall Buildings
	Charles Kaye Freshfield, 5, New Bank Buildings
Hayward, Charles Francis . . . . .	John Hayward, Dartford
Heming, William Waters . . . . .	Benjamin Alpin, Banbury, now of 5, Furnival's Inn
Henderson, Alfred . . . . .	James Terrell, St. Bartholomew's Yard, Exeter
Hodgson, Charles . . . . .	John Dodsworth, Selby
	Mark Fothergill, Selby
	Robert Benton Porter, Howden
Hutchinson, Bury Victor . . . . .	George Barham, 7, Staple Inn
Ives, James . . . . .	Herbert Sturmev, 8, Wellington Street, London Bridge, Southwark
Jackson, John Thomas Dodd . . . . .	John Richards, the younger, Reading
	William Burridge, Wellington

\* The banker's licence is, we believe, by way of commutation for the receipt stamp duty.—Ed.

James, John Gwynne . . . . .	Francis Lewis Bodenham, Hereford
Johnstone, William Paul . . . . .	John Owen, Manchester
Knowles, Charles James . . . . .	William Cooper, Shrewsbury
Leach, Francis . . . . .	William Henderson, of Lancaster Place
Mackrell, William Thomas . . . . .	John Lawrens Bicknell, 25, Abingdon Street, Westminster
Marsh, Robert . . . . .	William Fretwell Hoyle, Rotherham
Martin, Thomas . . . . .	James Kine, 19, Gracechurch Street
Martineau, Hubert . . . . .	Philip Martineau, 29, Montague Place, Bedford Square
	William Malton, 60, Carey Street, Lincoln's Inn
M'Leod, Bentley . . . . .	Henry Lowe, 22, Southampton Buildings, Chancery Lane
Merrifield, Thomas . . . . .	Thomas Seare Merrifield, Wainfleet
Moore, William . . . . .	Anthony John Moore, Bishopswearmouth
Nall, William . . . . .	George Nall, Shipston-upon-Stour
Owen, Arthur Watkin . . . . .	Copner Oldfield, Holywell, Co. Flint
	Hugh, Roberts, of Mold
Owen, Frederick . . . . .	Henry Owen, Worksop
Pearce William . . . . .	Thomas Coombs, the elder, Dorchester
Perkins, Richard, the younger . . . . .	Richard Perkins, the elder, late of 15, Gray's Inn Square, now of 15, Regent Street
Pigott, Horatio . . . . .	Edward Daniell, Colchester
Pinniger, John Alexander Mainly . . . . .	Broome Pinniger, Chippenham
	Henry Seymour Westmacott, 1, Gray's Inn Square
Probert, Charles Kentish . . . . .	Thomas Probert, Saffron Walden, and New- port
Raphael, Lewis, the younger . . . . .	Rowland Nevitt Bennett, 2, New Street, Lin- coln's Inn.
Reeve, Richard Henry . . . . .	Edmund Norton, Lowerstoft
Rhys, Charles Thomas . . . . .	Alexander Cuthbertson, Neath
Richardson, Philetus . . . . .	Frederick Halsey Janson, 4, Basinghall St.
Robinson, Philip Vyvyan, (formerly Philip Vyvyan) . . . . .	Helstone, Redruth.
Ruck, Adam Joseph . . . . .	John Monckton, of Maidstone
Rutherford, John . . . . .	George Rutherford, 13, Lombard Street
Scott, Montagu Douglas . . . . .	George Concanen, 5, Lincoln's-Inn-Fields
Shoosmith, William . . . . .	John Hensmen, Northampton
Smith, Frederick . . . . .	John George Smith and Frederick Edward Smith, of Crediton
Sparham, Henry Mills . . . . .	Henry Rogers, late of Thetford
	Thomas Cookson Kenyon, Brandon, Suffolk
	Thomas Borrett, 35, Lincoln's-Inn-Fields
Spooner, Thomas . . . . .	Sommersby Edwards, Long Buckley
	Thomas Ingram, Leicester
Stevens, Richard . . . . .	Edward Wilson Banks, Witham
Swainson, William . . . . .	John William James Dawson, 7, Charlotte St., Bloomsbury
Thompson, John Mawlen . . . . .	John Atkins, 5, White Hart Court, Lombard Street
Thurston, Obed Edward . . . . .	Thomas Crossman, Thornbury
Travers, William Thomas Locke . . . . .	Ralph Thomas Brockman, Folkstone
	Edward Watts, Hythe
Tucker, Andrew, the younger . . . . .	John Henry Benbow, 1, Stone Buildings, Lin- coln's Inn
Vaughan, Samuel Bradford . . . . .	Frederick John Manning, 30, Craven Street, Strand
Wake, Bernard . . . . .	Bernard John Wake, Sheffield
	William Wake, Sheffield
Waller, Thomas Henry . . . . .	William Saltwell, Carlton Chambers, Regent Street
Ward, Charles Edward . . . . .	Francis Ridout Ward, Bristol
Welchman, Charles John . . . . .	Robert Frederick Welchman, Southam
Yatman, Herbert George . . . . .	Charles Druce, the younger, 10, Billiter Square
Yorke, Henry . . . . .	George Croxton, Oundle
	Henley Smith, Warnford Court, Throgmor- ton Street.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

[Reported by WM. FINNELLY, Esq., Barrister at Law.]

## PRACTICE.—SUPPLEMENTAL ANSWER.

*A defendant allowed, after the cause is set down for hearing, to put in a supplemental answer to correct an error of a date recently discovered to have been untrue in his former answers, although the correction makes the answer a perfect legal defence to a just demand. In such a case the defendant must pay all the expenses caused to the plaintiff by the supplemental answer.*

THIS was an appeal motion to discharge an order of the Master of the Rolls, allowing the defendant to put in a supplemental answer to correct a mistake of a date which he recently discovered in his former answers.

The defendant was one of the trustees and executors under the will of the father of the plaintiff, Marian Fulton. The defendant alone proved the will, and the trust monies were lodged in the banking and commercial house of Ferguson & Co., of Calcutta, of which firm the defendant was himself a member. That house failed in 1833; and in June 1836 the defendant and his partners took the benefit of the Insolvent Debtors' Act then in force in Calcutta. He then got into business again, and acquired considerable property. The plaintiff was all that time under age, and residing in Scotland; but having attained her age of 21 years in 1843, and finding the defendant in this country, she filed her bill against him for an account of the trust monies.

The defendant, in his answer, admitted the trusts, and that he was a partner in the firm of Ferguson & Co.; and he stated that he was discharged in the Insolvent Debtors' Court, in India, in April, 1835, under the Insolvents' Acts then in force there. Parts of the answer were excepted to, and the exceptions were allowed; and the defendant put in a further answer, stating his discharge as before.

After replication filed, and the cause was set down for hearing, the defendant was reminded that it was in June 1836 that he obtained his discharge in the Insolvent Debtors' Court.

In his affidavit in support of his motion at the Rolls for leave to file a supplemental answer to correct that part of his former answers, he stated that he fell into the error by a slip of memory, in consequence of his not having any documents with him in this country to show him the true date of his discharge, but being lately informed that the Calcutta Gazette advertisements, containing the notices of insolvents in India, were transmitted to and gazetted in his country, he searched the gazettes, and discovered the error of the date for the first time on the 6th of December. The motion was made at the Rolls on the 19th of December, and was granted.

Mr. Wakefield and Mr. Toller, for the appeal motion, commented on the dishonesty of the defence that was set up by defendant against this just claim, and insisted that he was not entitled to the indulgence he asked, having sworn two former answers stating his discharge in April 1835. If the defendant had been discharged in that year, his discharge must have been under the act 9 G. 4, c. 73, and did not extend to an extinction of his liabilities to parties in this country; whereas a discharge under the 4 & 5 W. 4, c. 79, of which he now wished to avail himself, would have that effect. The defendant might, by ordinary industry and caution, have made himself certain of the true date of his discharge before he put in his first answer, and he was put upon his guard by the exceptions to it, but did not then think of correcting the date. It would be a dangerous practice to allow defendants in such circumstances to put in supplemental answers—making new defences. They cited *Cuning v. Marquis Townshend*,<sup>a</sup> *Livesey v. Wilson*,<sup>b</sup> *Macdougall v. Purrier*,<sup>c</sup> *Greenwood v. Atkinson*,<sup>d</sup> and other cases therein referred to.

Mr. Roupell and Mr. Tennant, in support of the order of the Master of the Rolls, contended that the error made by the defendant as to the date of his discharge was a mere mistake of a date, most natural for a person to fall into under the defendant's circumstances, and in such cases the court always granted the indulgence now asked. The defence had been put on the record by the former answers, and the true date was all that was wanting. They referred to *Wells v. Wood*,<sup>e</sup> *Strange v. Collins*,<sup>f</sup> and the 2nd vol. Daniel's Practice, p. 339, & seq., and cases there referred to.

Mr. Wakefield, in reply.—The defendant attempted to put on the record a legal bar to the plaintiff's unquestionable demand; he has failed in doing so, by mistake, and the court ought to rejoice that he has failed in a dishonest defence.

The Lord Chancellor.—He has failed by a mistake of a date; if he had not put this defence on the record at all, then it would be a question whether he ought to be allowed to supply the omission now. Is there any case in which the court refused to give the defendant leave to correct a mistake of a date?

Mr. Wakefield.—There never was a case less entitled to indulgence. The defendant risked the fortune of the plaintiff, when a child; he had himself the benefit of it, as a partner in the firm of Ferguson & Co.; and now, when he is called upon to give an account, he attempts this unjust defence. If the indulgence be granted, the plaintiff must be at the expense of applying to the court for leave to file a new replication.

The Lord Chancellor.—If it be necessary to apply for such leave to the court, any expense

<sup>a</sup> 19 Ves. 628.<sup>b</sup> 1 V. & B. 149.<sup>c</sup> 4 Russ. 486.<sup>d</sup> 4 Sim. 54.<sup>e</sup> 10 Ves. 404.<sup>f</sup> 2 V. & B. 163.

to which the plaintiff may be put must be paid by the defendant, as a condition of the indulgence. It is suggested to me that, after a supplemental answer, you have a right even to amend your bill. At present I cannot see any reason to refuse the defendant leave to correct the record by substituting the true date for an erroneous one. I will, however, look through the bill and answer before I decide the point.

The Lord Chancellor afterwards, giving his final judgment, said he had read the bill and answers. The case made by the plaintiff upon this appeal motion was stated in two ways: first, that if this were an ordinary case, the defendant ought not to be allowed to file a supplemental answer; secondly, that even if it would be allowed in ordinary cases, this being an unrighteous defence, the court ought not to aid the defendant in placing it upon the record. The defendant stated, in his first answer, that he was duly discharged as insolvent by the Court for the Relief of Insolvent Debtors, in Calcutta, in 1833, under the acts then in force for the relief of insolvent debtors there. In his further answer he stated that in 1833 he was adjudged insolvent by the Insolvent Debtors' Court in Calcutta, and afterwards, namely, as he believed, in April 1835, he was duly discharged under the provisions of the said acts, and that he had no documents from which he could state the date more precisely. The defendant afterwards accidentally discovered that he had made a mistake in the time at which his discharge by the Insolvent Debtors' Court at Calcutta took place, that it was not in April 1835, as he had stated in his answer, but in June 1836. He states by his affidavit that it was a mistake; that he had no documents at the time of putting in his answer; and that he then believed his discharge had taken place in 1835. But the discharge on which he insists is that which occurred in 1836; and all he seeks to do by a supplemental answer is, to correct the error in the date. The question is, whether in such a case leave to correct this error is to be refused. It certainly is rather staggering to be told that a court of justice has not the power to correct such a mistake as this. The defendant says he had no documents, and that is confirmed by the answer itself, in which he says that he was duly discharged by the Insolvent Debtors' Court in India, as he believes, in April 1835. He says in his affidavit that he learned accidentally, in a conversation with the solicitor of Mr. Clarke, one of his late partners in the house of Ferguson & Co., that Clarke's discharge took place in 1836, and that he knew that his own discharge was given at the same time; that he did not know that his petition had been advertised in the London Gazette, or that it was necessary to do so, but having referred to the Gazette, he found that his application to the court in Calcutta was made in 1835, and he says from these circumstances he is satisfied that his discharge took place in 1836, and not in 1835. He was in error when he stated his discharge to have been in 1835; he was not in possession of any

document from which he could precisely ascertain the date, and he stated the date in the answer according to the best of his belief. It is extremely difficult to say that under such circumstances a slip of this sort should not be corrected.

His lordship then reviewed some of the cases that were cited in the argument, and concluded from them that if this was an ordinary case the defendant was entitled to leave to file a supplemental answer to correct the error in the date. But it was said that the defence set up by this defendant is an unrighteous one, and that it is so unjust that the court ought not to afford any indulgence for correcting the error in his answer. It appears that Mr. Fulton, the testator, devised and bequeathed all his real and personal estate to trustees, to be sold and divided between his four children and his sister. The property therefore was divisible into five parts. The defendant was appointed a trustee and executor of the will, and he was then a partner in the house of Ferguson & Co. The testator's assets having been converted into money, part of it remained invested in the house of Ferguson & Co. That was undoubtedly a breach of trust. The share payable to the testator's sister was paid immediately, and the shares of two of the children were paid to them when they came of age. But before the two younger children attained twenty-one the house of Ferguson & Co. failed. The plaintiff is one of those two children. It is said that the defendant is now well able to pay the sum due to her, and that he ought not to receive the indulgence of the court to enable him to set up his discharge by the Insolvent Court in India as a defence against the claim. But the law allows such a defence to be made, and there is nothing before me to lead me to the conclusion that this is an improper defence. If I should decide on any such grounds, I should probably fail to do justice between the parties. I think, therefore, the defendant should be allowed to file a supplemental answer to correct this error.

The application having been made after replication, any inconvenience which may happen from that cause must be removed at the defendant's expense. The decision of the Master of the Rolls must be affirmed, with costs.

*Fulton v. Gilmour*, January 17, 20, and 21, 1846.

#### Rolls Court.

[Reported by E. VANSITTART NEALE, Esq.,  
Barrister at Law.]

PRACTICE.—23RD ORDER OF 1842.—PARTY OF UNSOUND MIND.

*Semble, the 23rd Order of 1842 is not applicable to the case of a party of unsound mind.*

THIS was a motion that service upon the guardian of a person of unsound mind, of a copy of the bill, under the 23rd order of 1841, should be good service.

Mr. Rogers for the motion, referred to a case

of *Gibson v. Same*, (unreported), where the Master of the Rolls had made an order, in the instance of a person too ill to be personally served, that service at the house should be sufficient.

Lord Langdale said.—There the party was capable of being cognizant of what was done. He did not think the order could be applied to a party of unsound mind; who had no discretion. It was asking to have all the proceedings go on, without answer or traversing note. How could the case be distinguished from that of an infant, who is expressly excepted from the order? However, it appearing that the bill which it was intended to serve, was a mere bill of revivor, rendered necessary by the marriage of a defendant; and that in the original suit an answer had been put in on the part of the party of unsound mind. His lordship was of opinion that a common order to revive was all that was needed.

*Pemberton v. Langmore.* Jan. 23, 1845.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, ESQ., Barrister at Law.]

PRACTICE.—PRISONER.—SHORT ORDER.—NOTICE OF MOTION.

*Where an order is made for the payment into court of a sum specified in the order within a limited time after service of a writ of execution to be issued in pursuance of the order, it is not necessary to obtain a short order for payment, previously to obtaining the writ of execution.*

*If several orders have been made which are sought to be set aside for irregularity, it is not sufficient to refer to them generally in the notice of motion, but they must be particularly specified.*

THIS was a motion that the defendant, John Turnbull, might be discharged out of the custody of the keeper of the Queen's Prison, to which he had been committed for nonpayment into court of a sum of 331*l.* 10*s.*, and that the plaintiffs might pay the costs of any orders in pursuance of which he had been committed, or that such costs might be considered costs in the cause. The defendant's father, by his will dated in 1821, left a sum of 800*l.* then out on mortgage to the defendant and one Pearson, upon trust to pay the dividends thereof to the plaintiff, Mary Turnbull for life, with remainder as to 400*l.*, part thereof, to the defendant, and as to the other moiety to Pearson's children. The mortgage was paid off, and the amount having been placed in the hands of certain bankers at Northallerton, who failed, a suit was instituted by the plaintiff and Pearson's children, by which they sought an indemnity for the loss occasioned by the failure of the bankers. A decree was made in Easter Term, whereby it was referred to the Master to inquire, and state under what circumstances the money was paid into the bank and continued there, and whether

the plaintiff, Mary Turnbull consented to its being placed and continued there: and it was ordered that the defendant should receive any dividend that might become payable from the estate of the bankers in respect of the 800*l.*, and pay the same into court to the credit of the cause. The inquiries had never been prosecuted; but in January 1833, the defendant was committed to prison for not paying into court a sum of 331*l.* 10*s.*, pursuant to a writ of execution issued in Nov. 1832, and had remained in prison ever since.

Mr. Blunt, in support of the motion, said, that the order for payment of the money was dated the 15th Nov. 1832, and merely directed that the defendant should, within a week after the writ of execution to be issued in pursuance of such order, pay the sum in question into court, or any other sum which might have been received by the defendant. Upon this order the writ of execution had issued, without any short order being previously obtained, which was indispensable.—*Seton on Decrees*, pp. 29, 417. The commitment was therefore irregular upon two grounds; 1st, That the terms of the order for payment were indefinite, and could not be acted on; and, 2ndly, That no short order for payment had been obtained previously to the writ of execution being issued.

Mr. Daniel, contra.

The Vice-Chancellor said, that with regard to the first question, it was an objection to the order for payment, and the terms of the notice of motion were too ambiguous to entertain an objection to set aside that order for irregularity, and that order must therefore be deemed regular. Then, as the order for payment contained a recital of the short order, for it directed that the defendant should, within a week after service of the writ of execution to be issued in pursuance of that order pay, &c., all that was necessary was the service of the writ of execution, which had been effected.

*Turnbull v. Turnbull.* Jan. 1845.

#### Eschequer.

[Reported by A. P. HURLSTONE, ESQ., Barrister at Law.]

WRIT.—WRONG COUNTY.

*Where a writ of summons described the defendant as of "Wilton Street, Finsbury, in the city of London," and it appeared by affidavit that Wilton Street was in the county of Middlesex, the court set aside the writ upon the application of the defendant, although he had not been personally served.*

A WRIT of summons described the defendant as "Thomas Hopkins, of Wilton Street, Finsbury, in the city of London." A rule nisi had been obtained to set aside the writ, copy and service thereof, upon affidavit that Wilton Street was in the county of Middlesex, and not in the city of London.

Bramwell showed cause.—The 2 Will. 4. c. 39, s. 1, enacts "that in every such writ and

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CAUSES APPOINTED FOR HEARING.

opy thereof the place and county of the residence or supposed residence of the party defendant, or wherein the defendant shall be, or shall be supposed to be, shall be mentioned. Here the writ mentions the place which the plaintiff supposed was the defendant's residence. [*Pollock, C. B.*—According to that argument the rule should be discharged, because there was a supposition in the mind of the one party which the other knew nothing about.] In *Jelks v. Fry*, 3 Dow. P. C. 37, it was held that "Yorkshire" was a good description of the defendant's residence, although he resided at Kingston-upon-Hull. *Pollock, C. B.*—That case is distinguishable. In common parlance, Hull is in Yorkshire.] Where a defendant's place of abode cannot be discovered at the time of issuing the writ, it is sufficient to insert the last known place of abode. *Norman v. Winter*, 5 Bing. N. C. 279. *Pollock, C. B.*—That was a correct description of a supposed residence: this is an incorrect description of an actual residence. *Alderson, B.*—This case is similar to *Lewis v. Newton*, 2 M. & R. 732, in which the court say, that there had been a distinct affidavit that Synnond's Inn was not in the city of London, the writ would be bad.] In *Windham v. Fenwick*, 1 M. & W. 102, *Parke, B.*, says that the description of a defendant's residence is immaterial; "he may be supposed to have lived here." Besides, the defendant has no right to make that application, for it appears by affidavit that he was never served with a copy of the writ, but that he kept out of the way to avoid service, and the copy was left at his dwelling-house, for the purpose of proceeding by distringas.

*Saunders*, in support of the rule. In *Hill v. Larvey*, 2 C. M. & R. 309, Lord Abinger, C., says, "In the clause giving the writ of summons, the precise and immediate place of the party's residence is clearly made essential to be stated, and the reason is good,—that being addressed to the party, it is to be served on him, and he is to do the act consequent on it, namely, to enter an appearance." Unless the description is correct, the person served cannot tell whether he is the party intended. *Lewis v. Newton* is an authority in point.

*Pollock, C. B.*—The rule must be absolute. The statute requires that the place and county of the defendant's residence shall be stated in the writ. Here there is a wrong county stated. *Lewis v. Newton* decides that if that distinctly appears by affidavit, the writ is bad. *Parke, B.*—I am of the same opinion. The writ prevents the word "London" from being used in the popular sense.

*Alderson, B.*—You may suppose a man to live where you like, but you must describe his supposed residence correctly.

Rule absolute.

*Eng v. Hopkins*. Exchequer. Hilary Term, 29, 1845.

*Scot v. Ker*, (1st appeal). Scotland.  
*Scot v. Ker*, (3rd appeal). Ditto.  
*Vaughan v. Gronow*. Chy. Eng., abated.  
*Heard*.—*The King v. Trafford*. Wr. Err., K. B. England.

1833.—*Blake v. Boyle*. Chy. Ireland.  
*Attwood and another v. Small*. Ex. England, abated (1st appeal).

*Johnstone v. Thomas, ex parte*. Scotland, abated.  
*Gould, pauper, v. Richards*. Chy. Ireland, abated.  
1836, *Fully heard*.—*Miller v. Knox*. Ex. Ireland.  
1837.—*Small v. Attwood*. Ex. Eng.  
1837—8.—*Turrell v. McGauraw, et ab.* Ex parte, abated. Chy. Ireland.

*Aitken v. Tinlay and Neilson*. Abated, ex parte. Scotland.

*E. Belfast v. Mqs. of Donegall*. Abated, Chy. Ireland.

*Crawford, pauper, v. Edward*. Ex parte. Scotland.  
*Andrews v. Walton*. Chy. England.

*Galway v. Barron*. Ex. Ireland, abated.

2nd Session, 1841, *fully heard*.—*The Skinners Co. v. The Irish Society*. Chy. England.

*Fully heard*.—*D. Beaufort v. Taylor, et ab.* Ex parte, Chy. England.

*Hatfield v. Phillips*. Wr. Err., Ex. Eng. For the judges.

*Hammersley v. Baron de Biel*. Chy. England, (Rolls.)

1843, *In part heard*.—*Campbell, or M'Laren, pauper, v. Fisher, pauper*. Ex parte. Scotland.

*Fully heard*.—*Forrest v. Harvey*. Scotland.

Ditto. *Robertson or Rennie v. Ritchie*. Scotland.

*Cookson v. Cookson, et ab.* Chy. Eng., (Rolls.)  
*E. Stirling v. Officers of State for Scotland*. Scotland.

*Sir Hy. Bridges v. Fordyce*. Scotland, abated.  
*Fergusson v. M'Innes*. Ex parte. Scotland.

*Macintosh v. Gordon or Macintosh*. Scotland.  
*Purves v. Landell*. Scotland.

*The Irish Society v. The Bishop of Derry and Raphoe*. Wr. Err., Exch. Chy. Ireland.

*Stokes v. Heron*. Ex parte. Chy. Ireland, abated.  
*V. Dungannon v. Smith*. Ditto, abated.

*Stuart v. Spottiswoode*. Scotland.  
*Rev. Dr. Gordon v. E. Kinnoul*. Ditto.

*Allan, pauper, v. Glasgow*. Ex parte, Scotland, abated.

*Beckham v. Drake*. Wr. Err. Ex. and Ex. Chy.  
*Hamilton v. Watson*. Scotland.

*D. Northumberland v. Sir J. McGregor*. Scotland.  
*D. Northumberland v. Viscountess Strathallen*. Scotland.

*Allen, pauper, v. MacPherson*. Chy. England.  
*Jack, Lessee of Right Hon. G. R. Dawson, et ab.*

*v. M'Entyre*. Wr. Err., Exch. Chy. Ireland.  
*Sheepy v. Lord Muskerry*. Chy. Ireland.

*Ferrier v. Hutchinson*. Scotland.  
*Abercrombie or Dingwall v. Dingwall*. Scotland.

*Hon. R. B. Wilbraham v. Scarisbrick*. Duchy of Lancaster, abated.

*Ferrier v. Dr. W. P. Alison*. Scotland.  
*M'Innes v. Wright*. Ex parte, ditto.

*Mayor, &c. of Newcastle-upon-Tyne v. The Att.-Gen.* Chy. Eng. (Rolls.)

*Cormack v. Erskine or Henderson*. Scotland.



Gordon v. Howden. Ditto.  
Cleland, pauper, v. Paterson or Cleland. Expte. Scotland.

Harrison v. Stickney. Wr. Err., Q. B. England.  
Broadley v. Stickney. Wr. Err. Ditto.  
Cruikshank v. Lady A. L. Cruikshank. Scotland.  
Hon. H. Trevor v. Hon. G. Trevor. Chy. Eng-land.

Colville v. Colville. Scotland.  
1844.—Campbell v. Sir C. Campbell, et scen. Scotland.

Darley v. The Queen. Wr. Err., Ex. Chy. Irel.

Reddie v. Higginbotham. Scotland.  
Hill or Davidson v. Hill. Ditto.

Dixon or Fisher v. Dixon. Ditto.  
Boyle v. Ferrall. Chy. Ireland.

Galbreath v. Armour. Scotland.  
Cunninghame v. Macleod. Ditto.

Grant v. Findlay. Expte. Ditto.  
Macpherson v. Craigie or Macpherson. Ditto.

Mayor, &c. Gloucester v. Osborne, et ab. Ex-parte, Chy. Eng.

Pinkus v. The Ratsliff Gas Light and Coke Co. Expte. Chy. Eng.

Mackintosh v. Brierley. Scotland.  
Brandas v. Barnett. Wr. Err., Common Pleas Ex. Chr.

Wallace v. Patton. Ex. Ireland.  
M. Breadalbane v. Sinclair, expte. Scotland.

Maule v. Sir T. Moncrieffe, Bt. Ditto.  
Governors of Heriot's Hospital v. Ross, a pauper. Scotland.

Risk v. Muir. Scotland.  
Lord Cameys v. Blundell, expte. Chy. Eng.

M'Lean, pauper, v. The Officers of State for Scot-land. Scotland.

Reddie v. Todd. Ditto.  
E. Hopetoun v. Ramsay. Ditto.

Grant v. Shepherd. Ditto.  
E. Mansfield v. Sir W. D. Stewart, Bt. Ditto.

Dr. Jack v. Sir T. Burnett, Bt. Ditto.  
Stewart v. Sir W. D. Stewart, Bt. Ditto.

1845.—E. of Stair v. King. Ditto.  
Findlay & Co. v. Findlay or Donaldson. Ditto.

Leith v. Young. Ditto.  
Morris v. V. Downes. Chy. Eng.

Cairns v. Raine. Ditto.  
Fisher v. Sir J. Colquhoun, exparte. Scotland.

Scott, pauper, v. Lothes, exparte. Ditto.  
Wishart v. Wilson or Wishart. Ditto.

Seward v. M'Donnell, exparte. Chy. Eng.

## PARLIAMENTARY PROCEEDINGS RE- LATING TO THE LAW.

### House of Lords.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment.  
Debtors and Creditors.  
Divorce, Privy Council.

#### BILLS FOR SECOND READING.

Actions on Death by Accident.  
Deodand Abolition.  
Companies' Clauses Consolidation.  
Jewish Disabilities.  
Stamp Duties Assimilation.

#### TO BE REPORTED.

Bail in Error in Misdemeanors.

Service of Common Law Process Abroad.  
Service of Scotch Process.  
Service of Irish Process Abroad.

### House of Commons.

#### NOTICES OF NEW BILLS.

Abolishing Punishment of Death.  
Prisoners' Council.  
Inclosure of Commons.  
County Rates.

#### BILLS FOR SECOND READING.

Clerks of the Peace.  
Medical Practice.  
Roman Catholics' Relief.  
Poor Law Settlement.

#### BILLS IN COMMITTEE.

Assimilating Irish Stamp Duties.  
Bastardy.  
Consolidation of Railway Clauses.  
Land Clauses Consolidation.

#### PASSED.

Companies' Clauses Consolidation.  
Property Tax.

## THE LAW SOCIETY'S CHARTER.

Our readers will have observed several notices in the daily papers regarding a caveat against a new charter to the Law Society, the hearing of which before the Lord Chancellor was from time to time deferred, on account of other pressing cases.

We are glad to say that the matter in dispute has been settled. It was, perhaps, scarcely to be expected that 1,300 lawyers would agree in opinion on any subject. By some concessions, however, on both sides, an arrangement has been effected, the caveat withdrawn, and the new charter passed the Great Seal on Friday the 14th inst., the charter bearing date the 20th February, when the caveat was lodged.

By the new charter, (to which we may have after advert,) the joint-stock character of the society has been abrogated. Shares to the amount of 8,000*l.* and upwards have been presented by the members to the corporate body, and each member also relinquishes one share by way of admission fee, into the new society.

## THE EDITOR'S LETTER BOX.

Several letters which are unavoidably deferred this week, will probably appear in the next number.

We are obliged by the communications from Dover and Civis.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 22, 1845.

— "Quod magis ad vos

Pertinet, et necire. malum est, agitamus."

HORAT.

### PARLIAMENTARY PROCEEDINGS.

PARLIAMENT having been adjourned for the vacation, we have an opportunity afforded us of inquiring what has been done in the way of law reform, and what may be expected in the course of the present session. In matters of this nature there is usually some note of preparation previous to the Easter recess.

The most important bill as yet brought in appears to us to be that relating to divorce, to which we last week adverted. The bill is now before us, and we print it in this number. It proceeds on the basis that "the obtaining divorces *à vinculo matrimonii* should be rendered a remedy common to all classes," and proposes to enact, that if any person shall present a petition to her Majesty in council, *complain*ing of adultery committed, and praying for a divorce *à vinculo matrimonii*, and her Majesty shall think proper to refer the same to the said committee, the matter of the petition shall be inquired of by the said committee, according to the usual course of proceeding and according to such further rules and orders as it is thereafter authorised to make, and if the committee shall report that a divorce should be granted as prayed, then her Majesty may confirm the same report by order in council, and such order shall have the force and effect of a divorce *à vinculo*.

This is to be the course of proceeding; but the Judicial Committee may also make rules and orders for conducting the inquiry "touching the requiring a proof of an action having been brought for criminal

conversation by the petitioner against the alleged adulterer, and a verdict having been obtained by him; touching the requiring the production of a sentence of the Ecclesiastical Court of separation *à mens et thoro*, touching the examination of the petitioner and otherwise, as to the said committee shall seem fit," "and generally such rules and orders for regulating its proceedings in divorces as it shall think fit." These are large powers. They would seem to point at an authority to dispense both with the action at law and the verdict of the Ecclesiastical Court, which have been heretofore usually required as a ground-work for an act of parliament. It is also proposed to give the Judicial Committee power to make it one condition of the granting the divorce, that such provision shall be made for the wife when divorced as may seem reasonable in all the circumstances of the case. This duty is now undertaken by a member of the House of Commons who is familiarly known by the name of "The Lady's Friend." It is his duty, although no provision is inserted in the bill for that purpose, to see that some adequate settlement is made on the divorced wife. If the transfer of jurisdiction is to take place, this provision therefore is only in accordance with the present practice, and seems to be founded on good policy and proper feeling. It will be observed that the words in the first section are sufficiently large to allow an injured wife, as well as an injured husband, to present a petition.

The bill for abolishing deodands is proceeding successfully, and will probably pass into law very shortly.

We hope that the bill authorising the service of process abroad will be speedily passed.

A very proper bill has been brought in by the Lord Chancellor for relieving persons of the Jewish persuasion elected to municipal offices. The declaration required by the stat. 9 Geo. 4, c. 17, being made "on the true faith of a Christian," obviously excludes a Jew. But no person chosen a sheriff of a city or town shall thereby be liable to make the declaration in the 9 Geo. 4, c. 17. This is enacted by stat. 5 & 6 W. 4, c. 28. And yet a Jew, having been sheriff, cannot be an alderman or mayor.\* The bill now proposed is intended to abolish this distinction. If we allow a Jew to be high sheriff of a county, we think he may be safely allowed to be alderman or mayor of a borough.

Besides these bills, which are all in the Lords, there are the Settlement Bill, and the Justice of the Peace Clerk Bills, which have made some progress in the House of Commons. The latter is a useful measure.

We also believe it is the Lord Chancellor's intention to introduce a bill for regulating charities of a certain amount. And we shall also, after Easter, have the promised bill for the Amendment of the Transfer of Property Act. We see, further, that a movement is taking place in certain quarters with respect to obtaining a repeal or modification of the Bankruptcy Act of last session, more especially as to the 20*l*. clause. We may also expect that bills for General Enclosure and for Draining will be introduced by the government in the course of the session.

While thus presenting to our readers a view of what is to be done, we may also notice, with renewed satisfaction, that no attempt is made to revive the Local Courts' Bill; nor is there any great wish on any part to revive it. The establishment of these isolated provincial judicatures we have always considered as open to the greatest objection. The modification of the circuits, and the diminishing expenses in suits of a certain amount, are the real remedies for any grievance that may exist on this head; or if any local judges be necessary, let them be such as proceed from the heart of the law, and not attempt to exist as limbs lopped off from the main body. We are sincerely rejoiced that at

last most thinking men are agreed on this point. With respect to the Ecclesiastical Courts' Bill, perhaps more doubt exists. We believe that these courts are becoming obsolete, and we doubt whether they will exist, in their present shape, another century.

## THE LAW OF JOINT STOCK COMPANIES.

### PAYMENT OF CALLS.

ONE of the most useful provisions of the Joint Stock Companies' Regulation Act, 7 & 8 Vict. c. 110, (printed 28 L. O.,) is section 54, being that which regulates the proceedings to recover instalments, by enacting that if, in the case of any company registered under the act, any shareholder fail to pay any instalment, the company is authorised to sue such shareholder for the amount in an action of debt, and in the declaration it shall be sufficient to state only that at the time of the commencement of the suit the defendant, as the holder of certain shares, was indebted to the company in a certain sum for certain instalments of capital, and that the defendant had not paid the same, and that if on the trial of the action it shall be proved that the defendant was the holder of any share when such instalments or any of them became due, then such company shall recover such instalments, together with interest.

As the law stands, independent of the act, in an action for calls, the shareholder unwilling to pay sets up a variety of objections under the deed of settlement, which, although they are evidently discouraged by the courts, yet embarrass the real question at issue. This is seen in a late case, reported at great length by Messrs. Adolphus & Ellis, *Smith v. Goldsworthy*, 4 Q. B. 430. First, as to who is to bring the action:—The company's deed was dated 28th August, 1825, and by it the subscribers covenanted with Taylor, Ogg, and Martin, to pay such instalments on their shares as should be called for by the directors, in pursuance of the power vested in them. The defendant having become proprietor of shares, executed an indenture, dated 7th March, 1840, after the death of Ogg, covenanting with Taylor and Martin to observe the covenants in the deed of 1825, and to pay all instal-

\* See *Queen v. Humphreys*, 3 Nev. & P. 68.

ments. On the 3rd of July 1840, an act of parliament was passed, which enacted that all actions, suits, &c. in respect of any present or future liability of the company, or upon any bond, covenant, &c. which already have been or hereafter shall be given to or with the company, or *wherein the said company is* or shall be interested, and generally all proceedings carried on by or on behalf of the company, or wherein the company is interested, shall and may be lawfully carried on in the name of the person who shall be secretary. An action being brought on this clause, it was contended that the clause did not apply, because the covenant in question was entered into not with the company, but with Taylor and Martin. "A similar objection," said Lord Denman, C. J., "was taken and overruled in the Court of Common Pleas, in Trinity Term, 1842, except that the words of the act of parliament in that case were—any bond, covenant, &c. 'which already have been entered into or with the said company, or to or with any person or persons whatever, in trust for the said company, or to or with any person or persons for the use or benefit thereof,' which words are not found in the company's act; but the words 'or *wherein the said company is or shall be interested*,' are certainly as large, and, according to a fair construction of them, appear to us to embrace the present case, more particularly as, according to the recent decision of *Steward v. Greaves*, 10 M. & W. 711, in the Exchequer, whenever a public company may sue by their public officer, they are bound to do so."

Another frequent objection is, that the number of directors has been reduced. In the present case it was ordained that the directors should never consist of more or fewer than sixteen, but by another clause a special general meeting might be called, which might amend, alter, or annul, all or any of the clauses of the deed, or of the existing regulations of the company, and make any new regulations; and, as was held under clause 29, the company might, at a special general meeting, reduce the number of directors from sixteen to seven.

But the court thought, that under s. 29 the company had no power to reduce the number of the shares. But although that could not be done, and it had been attempted, it did not lie in the mouth of the defendant, a shareholder, after the resolutions in reducing them, to make this objection. "We think," said Lord Denman, C. J., "the shares always were in point

of law 100l. shares, and therefore that the thirty-seventh and fortieth pleas are no answer to the action. We also further think, that if the shares were reduced at one time to 50l., still the resolutions of 1838 restored them to their original value, and that the concurrence of the defendant in carrying those resolutions into effect, is a material question. Neither is it necessary to show that such concurrence was by deed, for it in no way alters the covenant of the defendant. That covenant binds him to observe the covenants in the deed of settlement, which deed provides for alterations to be made by resolutions, not under seal, but to be passed at special general meetings; the resolutions themselves are not required to be by deed, nor can it be in any way requisite that the concurrence of the defendant in them should be by deed."

## PRACTICAL POINTS OF GENERAL INTEREST.

### MARRIAGE LICENSE.

In the case of *Cope v. Burt*, 1 Phill. Ecc. Rep. 224, a wife had been known for several years by the name under which she was married, and this was considered by Lord Stowell as a reason for his judgment in favour of the marriage. See also *Cockburn v. Garnault*, 1 Hag. 436. But when the marriage is by banns, it is not necessary that a fraud should have been practised on one of the parties to the marriage, if in effect a fraud on the law has been committed. See *Wakefield v. Wakefield*, 1 Hagg. Consist. Rep. 394; *Rex v. Tibshelf*, 1 B. & Ad. 190. But this reason does not extend to marriage by license. "There is no authority," said Lord Denman, C. J., "for the general proposition, that a marriage license is made absolutely void by a mistake in the name of one party. The reason for which banns are held invalid on this account does not extend to licenses: the protection given by the one is of a different kind from that afforded by the other. No fraud is suggested here." Mr. Justice Patteson said, "I have inquired as to the opinion of the Ecclesiastical Courts on this subject, and find that *Cope v. Burt* and *Cockburn v. Garnault*, 1 Hagg. Consist. Ca. 436, have always been considered decisive authorities there. The distinction between banns and licenses is clear; and although perhaps if a license were obtained for one person with the intention that it should be used for another, such

a license might not be valid, that is not the case here, and the objection cannot prevail." *Lane v. Goodwin*, 4 Q. B. 361.

## NEW BILLS IN PARLIAMENT.

### DEATH BY ACCIDENTS COMPENSATION.

This bill recites that no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him; and proposes to enact,

1. That whosoever any person shall by his wrongful act, neglect, or default have caused the death of another person, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action in any of her Majesty's courts of records at Westminster, and recover damages in respect thereof, then and in every such case the person causing such death shall be liable to an action for damages resulting therefrom, notwithstanding the death of the person injured.

2. That every such action shall be for the sole benefit of the wife or husband, or child or children of the person whose death shall have been so caused as aforesaid, and may and shall be brought by and in the name of the executor or executrix, or administrator or administratrix, or if there shall be neither executor or executrix, administrator or administratrix, then by the wife or husband or child, or one of the children, of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the pecuniary injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount recovered, after deducting all costs in and about such proceedings, shall be divisible and divided amongst the before-mentioned parties in such shares and proportions as the jury by their verdict shall find and direct: Provided always, that not more than one action shall lie for and in respect of the same subject matter of complaint, and if two or more actions in respect thereof shall at any time be brought, it shall be lawful for the court or a judge to order that the same may be consolidated, and also to direct in whose name the action after consolidation shall proceed, as well as to make such other orders therein as to them or him shall seem fit.

3. That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a particular of the person or persons for whom and on whose behalf damages shall be claimed in such action.

4. That nothing herein contained shall in any way or manner be construed to discharge or relieve any person or persons, corporation or company, from being proceeded against criminally for

any matter done or omitted for which this act provides a civil remedy; and that the amount of any damages and costs that may be recovered in any action as aforesaid shall and may be recoverable out of the lands, hereditaments, goods, and effects of any person or persons, corporation or company, notwithstanding the same shall and may have been forfeited to the crown by the conviction of any person or persons causing such death, for felony or misdemeanor in consequence thereof.

5. That no voluntary deed, conveyance, or assignment, otherwise than for a valuable and *bona fide* consideration, made by any person or persons, corporation or company, after he or they shall have caused the death of any person or persons as aforesaid, shall be valid or binding as against the party entitled to recover damages and costs in any such action against such person or persons, corporation or company.

6. That no proceedings under and by virtue of this act shall be commenced or taken before the expiration of three months after the expiration of six months from the death of the party injured as aforesaid.

7. That in case any person who may have been so injured by the act, neglect, or default of another, and who may afterwards die in consequence thereof, shall in his lifetime have recovered damages in an action against or received compensation by agreement or compromise from the person or persons, bodies corporate, or company, for the injury he may so have sustained, then and in such case the remedies provided by this act shall not accrue to the personal representatives or surviving relations of such deceased person as aforesaid.

8. That it shall be lawful, notwithstanding anything herein contained, for the personal representatives or surviving relations of any deceased persons as aforesaid to compromise any claim against any person or persons, bodies corporate or company, for injury or loss that he, she, or they may have sustained.

9. That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say, the word "person" to apply to bodies politic or corporate, whether sole or aggregate; and words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

10. That this act shall come into operation from and immediately after the passing thereof.

### DEODANDS ABOLITION.

Reciting that the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting deodands, is unreasonable and inconvenient: It is proposed to enact, That from and after the day of 1845, there shall be no

forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no coroner's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any dead and whatsoever; and any such finding shall be null and void; and it shall not be necessary in any indictment or inquisition for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

#### JEWISH DISABILITIES REMOVAL.

This bill recites that the declaration prescribed by an act of the 9 G. 4, c. 17, intituled "An act for repealing so much of several acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments," on admission into office in municipal corporations, cannot conscientiously be made and subscribed by persons of the Jewish religion: It is therefore proposed to enact, That, instead of the declaration required to be made and subscribed by the said recited act, every person of the Jewish religion be permitted to make and subscribe the following declaration within one calendar month next before or upon his admission into the office of mayor, alderman, recorder, bailiff, town clerk, councillor, or any other municipal office in any city, town corporate, borough, or cinque port, within England and Wales, or the town of Berwick-upon-Tweed:

"I, A. B., being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in an act passed in the 9 G. 4, intituled 'An act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments,' do solemnly, and sincerely, and truly declare, That I will not exercise any power or authority or influence which I may possess by virtue of the office of \_\_\_\_\_ to injure or weaken the Protestant Church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any right or privileges to which such church or the said bishops and clergy may be by law entitled."

2. That such declaration shall be of the same force and effect as if the person making it had made and subscribed the declaration aforesaid contained in the said act of the 9 G. 4, c. 17.

#### DIVORCE (PRIVY COUNCIL).

This bill recites, that it is expedient that the obtaining divorces *à vinculo matrimonii* should be rendered a remedy common to all classes of the community, and such cases may conveniently be considered by the Judicial

Committee of her Majesty's Privy Council: It is therefore proposed to enact as follows:—

1. That if any person shall present a petition to her Majesty in Council, complaining of adultery committed, and praying for a divorce *à vinculo matrimonii*, and her Majesty shall think proper to refer the same to the said committee, the matter of the petition shall be inquired of by the said committee, according to the usual course of proceeding, and according to such further rules and orders as it is hereinafter authorised and empowered to make; and if the said committee shall report that a divorce should be granted as prayed, then it shall be lawful for her Majesty to confirm the same report by order in council, and such order shall be binding on all parties, and shall have the force and effect of a divorce *à vinculo matrimonii*, any law, custom, or usage to the contrary in anywise notwithstanding.

2. That the said Judicial Committee shall have power to make such rules and orders of proceeding as it shall deem fit for conducting the said inquiry, touching the requiring a proof of an action having been brought for criminal conversation by the said petitioner against the alleged adulterer, and a verdict having been obtained by him, touching the requiring the production of a sentence of the Ecclesiastical Court of separation *à mens et thoro*, touching the examination of the petitioner, and otherwise as to the said committee shall seem fit, and generally such rules and orders for regulating its proceedings in divorces as it shall think fit, which rules and orders, being submitted to her Majesty, and confirmed by order in council, shall be laid before both houses of parliament within one calendar month next after such order in council being made, if parliament be sitting, or if not within one calendar month after the commencement of the then next session, and shall be deemed and taken to be binding on the said committee, and on all parties before it, in such matters of divorce, unless one or other house of parliament shall, within one calendar month after the same shall have been laid before it, present an address to her Majesty praying that the said order in council may be rescinded, in which case such rules shall have no force or effect whatsoever.

3. That it shall and may be lawful for the said Judicial Committee to make it one condition of the granting such divorce that such provision shall be made for the wife, when divorced, as may seem reasonable and just in all the circumstances of the case, which conditions, if approved by her Majesty by order in council, shall be deemed and taken to be binding on the petitioner after the dissolution of his marriage; and the wife shall, after such dissolution, have such and the like remedies for recovery of the annuity granted as she would have had in case the said petitioner had executed a bond, or other instrument under seal, conditioned to pay such annuity, provided that the said Judicial Committee shall have power to require such petitioner to give his own bond, with securities, to be approved by the clerk of the council, for the discharge of such annuity.

## NOTICES OF NEW BOOKS.

*A Selection of Legal Maxims, Classified and Illustrated.* By HERBERT BROOM, Esq., of the Inner Temple, Barrister-at-Law. London: A. Maxwell & Son, 1845. Pp. 469.

WE welcome this volume as a very valuable addition to the stock of elementary works on the law. It forms a collection of the first principles of legal science, and effects a vast improvement on the "law grammars" of former times, which however useful as books of reference, were too concise, either to attract or instruct the student. It need scarcely be said that for the most part the maxims of the English law are founded on reason, public convenience and necessity, prevailing not only in the Roman law but in the code of every civilized country. The increase of commerce and the complicated affairs of mankind have given rise to many subtleties and refined distinctions, some of which have become established doctrines in our courts of law and equity. This incorporation of new principles into our system of jurisprudence, or the modification or new application of old principles, renders, as Mr. Broom observes, "an accurate acquaintance with the simple fundamental rules the more necessary, in order that they may be directly applied or qualified, or limited according to the exigencies of the particular case, and the novelty of the circumstances which present themselves."

In his first two chapters Mr. Broom treats of maxims which relate to constitutional principles, and the mode in which the laws are administered. Thus the first chapter contains—1. Rules founded on public policy; 2. Maxims relating to the crown. The second comprises,—1. The judicial office, and 2. The mode of administering justice. These maxims being generally known and easily comprehended, have been briefly considered.

Next come certain maxims which are rather deductions of reason than rules of law. These the author terms "Rules of Logic."

Then follow, in the fourth chapter, what are termed fundamental legal principles.

The fifth treats—1. Of the maxims relating to property, its rights and liabilities; and 2. Of the rules relating to marriage and descent.

The sixth sets forth the maxims relating to the interpretation of deeds and written instruments.

The seventh comprises those which are applicable to the law of contracts; and, The 8th, maxims applicable to the law of evidence.

Mr. Broom has resorted to the reports, ancient and modern, and the standard treatises, to ascertain the maxims which are most frequently cited and applied, and the work contains not only all the important legal maxims, but explains and illustrates them, and notices the various exceptions and modifications in their application. In selecting the cases which illustrate the several rules, Mr. Broom has properly selected those in which the particular maxim has been cited or applied.

Having thus stated the scope of the publication, we shall now submit to our readers a few extracts, for the purpose of showing the manner in which the author has executed his task. Part of the merit of the work consisting in a classification instead of a mere alphabetical arrangement of the maxims, we shall select the following from the fourth chapter:—

*"Fundamental legal principles.*

"Ubi jus, ibi remedium.

Communis error facit jus.

Quod remedio destituitur ipsâ re valet si culpa absit.

In jure non remota causa sed proxima spectatur.

Actus Dei nemini facit injuriam.

Lex non cogit ad impossibilia.

Ignorantia facti excusat,—ignorantia juris non excusat.

Volenti non fit injuria.

Interest reipublicæ ut sit finis litium.

Nemo debet bis vexari pro unâ et eadem causâ.

Acta exteriora indicant interiora secreta.

Actus non facit reum nisi mens sit rea.

De minimis non curat lex."

From this chapter we give the illustrations of the well-known rule, "*ignorantia facti excusat, ignorantia juris not excusat.*"

"With respect to the latter part of this maxim, which is adopted by the Roman law, it has been observed, that every man must be taken to be cognisant of the law; otherwise, there is no saying to what extent the excuse of ignorance may not be carried, it would be urged in almost every case." It is, therefore, a rule, 1st, the money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable, if there be nothing unconscientious in the retainer of it; and, 2ndly, that money paid in ignorance of the facts is recover-

\* "Per *Ld. Ellenborough, C. J., Bilbie v. Lumley*, 2 East, 469; Preface to *Co. Litt.*; *Gomery v. Bond*, 3 M. & S. 378.

able, provided there have been no laches in the party paying it.<sup>b</sup>

"In a leading case on the first of the above rules, the facts were, that the captain of a king's ship brought home in her public treasure upon the public service, and treasure of individuals for his own emolument. He received freight for both, and paid over one-third of it according to an established usage in the navy, to the admiral under whose command he sailed. Discovering, however, that the law did not compel captains to pay to admirals one-third of the freight, the captain brought an action for money had and received, to recover it back from the admiral's executrix; and it was held, that he could not recover back the private freight, because the whole of that transaction was illegal; nor the public freight, because he had paid it with full knowledge of the facts, although in ignorance of the law, and because it was not against conscience for the executrix to retain it.<sup>c</sup>

"In another very recent case, the plaintiff, being about to compound with his creditors, defendant, a creditor, refused to subscribe the deed unless he were paid in full; and the plaintiff, to obtain his signature, gave a bill, payable to defendant's agent for the difference between 20s. in the pound and 8s., the proportion compounded for, whereupon defendant signed the deed. Plaintiff did not, however, honour the bill when due, but, on subsequent application, he paid it some months after the dishonour to the payee, and defendant received the money, the other creditors being paid according to the deed. The court of Q. B. held, that plaintiff could not recover back the amount so paid to defendant above 8s. in the pound; for that the transaction had been closed by a voluntary payment, with full knowledge of the facts, and ought not to be re-opened; and that it did not make any difference that the sum in question had not been recovered by action.<sup>d</sup>

"So, where there is bona fides, and money is paid with full knowledge of the facts, though there be no debt, still it cannot be recovered back;<sup>e</sup> as, where an underwriter, having paid the loss, sought to recover the amount paid, on the ground that a material circumstance had

been concealed. It appearing, however, that he knew of this at the time of the adjustment, it was held, that he could not recover.<sup>f</sup> And the same principle has been held to extend to an allowance, on account, as being equivalent for this purpose to the payment of money.<sup>g</sup>

"Again, money paid by the plaintiff to the defendant under a *bond fide* forgetfulness of facts, which disentitled the defendant to receive it, may be recovered back as money had and received;<sup>h</sup> and in the case deciding this it was observed, that, where money is paid to another under the influence of a mistake, that is, upon the supposition that a specific fact is true, which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover back, and it is against conscience to retain it,<sup>i</sup> though a demand may be necessary in those cases in which the party receiving may have been ignorant of the mistake. If, indeed, the money is intentionally paid, without reference to the truth or falsehood of the fact, the plaintiff meaning to waive all inquiry into it, and that the person receiving shall have the money at all events whether the fact be true or false, the latter is certainly entitled to retain it; but if it is paid under the impression of a fact which is untrue, it may, generally speaking, be recovered back, however careless the party paying may have been in omitting to use due diligence, or to inquire into the fact;<sup>k</sup> and, therefore, it does not seem to be a true position in point of law, that a person so paying is precluded from recovering by laches in not availing himself of the means of knowledge in his power,<sup>l</sup> though, if there be evidence of means of knowledge, the jury will very readily infer actual knowledge.<sup>m</sup>

"In other cases, different in their circumstances from those above cited, the maxim as to ignorance of fact is frequently applicable. Thus, in an action on a policy of insurance, the question was, whether a captain of a vessel

<sup>1</sup> "*Bilbie v. Lumley*, 2 East, 469; *Gomery v. Bond* 3 M. & S. 378; *Lothian v. Henderson*, 3 B. & P. 420.

<sup>2</sup> "*Skyring v. Greenwood*, 4 B. & C. 281; per *Best*, C. J., *Bramston v. Robins*, 4 Bing. 15; *Shaw v. Picton*, 4 B. & C. 715.

<sup>3</sup> "*Kelly v. Solari*, 9 M. & W. 54; *Lucas v. Worswick*, 1 Moo. & Rob. 293.

<sup>4</sup> "See *Milnes v. Duncan*, 6 B. & C. 671; *Bize v. Dickson*, 1 T. R. 285; cited per *Marsfield*, C. J., *Brisbane v. Dacres*, 5 Taunt. 162; *Harris v. Lloyd*, 5 M. & W. 432.

<sup>5</sup> "*Per Parke, B.*, *Kelly v. Solari*, 9 M. & W. 58, 59, recognised *Bell v. Gardiner*, 4 Scott, N. R., 621, 633, 634; per *Ashurst, J.*, *Chatfield v. Paxton*, cited 2 East, 471, n. (a)

<sup>6</sup> "*Per Parke, B.*, 9 M. & W. 58, 59, controverting the dictum of *Bayley, J.*, in *Milnes v. Duncan*, 6 B. & C. 671; *Lucas v. Worswick*, 1 Moo. & Rob. 293; *Bell v. Gardiner*, 4 Scott, N. R., 621, 635.

<sup>7</sup> "*Per Coltman, J.*, 4 Scott, N. R., 633.

<sup>b</sup> "*Smith, L. C.*, 244; *Wilkinson v. Johnston*, 3 B. & C. 429.

<sup>c</sup> "*Brisbane v. Dacres*, 5 Taunt. 143; per *Ld. Ellenborough, C. J.*, *Bilbie v. Lumley*, 2 East, 470; *Bramston v. Robins*, 4 Bing. 11; *Stevens v. Lynch*, 12 East, 38; per *Ld. Eldon, C.*, *Bromley v. Holland*, 7 Ves. jun. 23; *Lowry v. Bourdieu*, Dougl. 468; *Gomery v. Bond*, 3 M. & S. 378; *Lothian v. Henderson*, 3 B. & P. 420; *Dew v. Parsons*, 2 B. & Ald. 562. See the argument in *Gibson v. Bruce*, 6 Scott, N. R., 309; *Smith v. Bromley*, cited 2 Dougl. 696, and 6 Scott, N. R., 318.

<sup>d</sup> "*Wilson v. Ray*, 10 A. & E. 82; on which case, see the observations of *Tindal, C. J.*, in *Gibson v. Bruce*, 6 Scott, N. R., 325, 326.

<sup>e</sup> "*Per Patteson, J.*, *Duke de Cadaval v. Colins*, 4 A. & E. 866.



which sailed to a blockaded port knew of the blockade at a particular period; and it was observed by Lord Tenterden, that, if the possibility or even probability of actual knowledge should be considered as legal proof of the fact of actual knowledge, as a *presumptio juris et de jure*, the presumption might, in some cases, be contrary to the fact, and such a rule might work injustice; and that the question, as to the knowledge possessed by a person of a given fact, was for the decision and judgment of the jury. It was also remarked, in the same case, that the probability of actual knowledge upon consideration of time, place, the opportunities of testimony, and other circumstances, may in some instances be so strong and cogent, as to cast the proof of ignorance on the other side in the opinion of the jury, and, in the absence of such proof of ignorance, to lead them to infer knowledge; but that inference properly belonged to them.\*

"In ejectment by A., claiming title under a second mortgage, it was held, that a tenant, who had paid rent to the lessor of the plaintiff under a mistake of the facts, although estopped from disputing A.'s title at the time of the demise, might nevertheless show in defence a prior mortgage to B., together with notice from, and payment of rent to, B.; and that he was not precluded from this defence by having paid rent to A. under a mistake."

"In some cases, also, where, at the time of applying to a court of justice, the applicant is ignorant of circumstances material to the subject-matter of his motion, he may be permitted to open the proceedings afresh; for instance, under very peculiar circumstances, the court re-opened a rule for a criminal information, it appearing that the affidavits on which the rule had been discharged were false."

"In criminal cases the above maxim also applies when a man, intending to do a lawful act, does that which is unlawful. In this case, there is not that conjunction between the deed and the will which is necessary to form a criminal act; but, in order that he may stand excused, there must be an ignorance or mistake of fact, and not an error in point of law: as, if a man, intending to kill a thief or housebreaker in his own house, and under circumstances which would justify him in so doing, by mistake kills one of his own family, this is no criminal action; but, if a man thinks he has a right to kill a person excommunicated or outlawed wherever he meets him, and does so, this is wilful murder. For a mistake in point of law, which every person of discretion not only may, but is bound and presumed to know, is, in criminal cases, no sort of defence." *Ignor-*

\* "Harratt v. Wise, 9 B. & C. 712, 717.

o "Doe d. Higginbotham v. Barton, 11 A. & E. 307. See also Perrott v. Perrott, 14 East, 422, which was a case as to the cancellation of a will.

p "Res v. Eve, 5 A. & E. 780; Bodfild v. Padmore, Id. 785, n.

q "4 Bla. Com. 27; Doct. and Stud. Dial. ii. c. 46,

*scientia eorum quæ quis scire tenetur non excusat."*

We think that the work does Mr. Broom great credit, and whilst it will be especially useful and indeed almost necessary to the student, it will frequently assist the practitioner by furnishing a large collection of cases in which the great principles of our common law have been illustrated and applied, and it certainly ought to find a place in the library of every scientific lawyer.

## LAW OF BILLS OF EXCHANGE.

### PROOF OF IDENTITY.

In the last number of Messrs. Adolphus and Ellis's Reports, (vol. iv. p. 630,) we observe a case of *Roden v. Ryde*, before the Court of Queen's Bench, which throws some new and very important light upon the question, how far it is necessary, in suing on a bill of exchange, to prove that the party whose name appears on the document is truly the party made defendant to the action. The result appears to be, that there must be proof of this indispensable identity in all cases; but much slighter evidence will suffice in certain cases than in others. In the case we are now alluding to, it appeared that the action was brought by the indorsee against the acceptor of certain bills of exchange. At the trial, before Mr. Justice Williams, it was proved that the bills were accepted in the name of *Henry Thomas Ryde*, and made payable at the London and Westminster Bank. The cashier of that establishment swore that one *Henry Thomas Ryde* kept an account there, and the acceptances were in his handwriting; that he was acquainted with his handwriting, although he had never seen him write, and in fact did not know him individually, his only means of knowledge being derived from the fact of having, in his official character as servant of the bank, paid cheques, from time to time, drawn under the name in question. It was contended that this evidence, which established an identity of name, did not go far enough, since it did not establish an identity of the party, for it failed to show that the *Henry Thomas Ryde* who was proved to have kept an account in the London and Westminster Bank, and the *Henry Thomas Ryde* who was defendant on the record, were in fact one and the same individual. The question was whether this was necessary. The learned judge thought that there was a sufficient *prima facie* case to go to the jury; who returned a verdict for the plaintiff. The court, however, afterwards granted a rule nisi, to show cause why a nonsuit should not be entered and a new trial had; but upon argument the rule was discharged.

r "Hale, Pl. Cr. 42."

In delivering his opinion Lord Denman said:—Where a person in the course of the ordinary transactions of life has signed his name to such an instrument as this, I do not think there is an instance in which evidence of identity has been required, except *Jones v. Jones*.<sup>a</sup> There the name was proved to be very common in the country; and I do not say that evidence of this kind may not be rendered necessary by particular circumstances. But, in cases where no particular circumstance tends to raise a question as to the party being the same, even identity of name is something from which an inference may be drawn. If the name were only *John Smith*, which is of very frequent occurrence, there might not be much ground for drawing the conclusion. But *Henry Thomas Rydes* are not so numerous; and from that, and the circumstances generally, there is every reason to believe that the acceptor and the defendant are identical.

The observations of Lord Abinger and Alderson, B., in *Greenshields v. Crawford*, apply to this case.<sup>b</sup> The transactions of the world could not go on if such an objection were to prevail. It is unfortunate that the doubt should ever have been raised, and it is best that we should sweep it away as soon as we can.

*Williams, J.* I am of the same opinion. It cannot be said here that there was not some evidence of identity. A man of the defendant's name had kept money at the branch bank; and this acceptance is proved to be of his writing. Then is that man the defendant? That it is a person of the same name is some evidence till another party is pointed out who might have been the acceptor. In *Jones v. Jones*,<sup>c</sup> the same proof was relied upon; and Lord Abinger said:—"The argument for the plaintiff might be correct, if the case had not introduced the existence of many *Hugh Joneses* in the neighbourhood where the note was made." It appeared that the name *Hugh Jones*, in the particular part of *Wales*, was so common as hardly to be a name; so that a doubt was raised on the evidence by cross-examination. That is not so here, and therefore the conclusion must be different.<sup>d</sup> Rule discharged.

<sup>a</sup> 9 M. & W. 75.

<sup>b</sup> The case of *Greenshield v. Crawford*, 9 M. & W. 314, was of this complexion. The action was brought by the indorsee against the acceptor of a bill of exchange; and the question was whether there was sufficient evidence of the defendant's identity. Lord Abinger, C. B., said, "I am of opinion that the evidence is quite sufficient. The bill is drawn upon Charles Banner Crawford, and addressed to him at the India House. It is proved that there is a person of that name; that he once belonged to the India House; and that the acceptance is in his hand-writing. That is surely sufficient evidence of identity; especially as no affidavit is produced to show that he is not the defendant in the action."

<sup>c</sup> 9 M. & W. 75.

<sup>d</sup> See *Simpson v. Dismore*, 9 M. & W. 47.

## LAW OF COSTS.

### FRACTION IN EQUITY.—COUNSEL'S FEES.

In a former number we noticed the case of *Cooke v. Turner*,<sup>a</sup> in which the Vice-Chancellor of England held that there had been a miscarriage of the Taxing Master in wholly disallowing the fees paid to a junior counsel employed along with a senior to oppose a motion for further time to answer. It seems probable, however, that if the Master on that occasion had merely reduced the fees to the lowest rate or degree, the court would not have interfered; for in *Attorney-General v. Lord Carrington*, 6 Beav. 454-460, the Master taxed off fifteen guineas from the sum of 39l. 4s., which had been paid for fees to the Attorney-General and two counsel with him. Upon a petition impugning the Master's taxation in this and other respects, it was contended that, having regard to the time devoted to the cause, which occupied two days in the hearing, the fees paid were reasonable and proper, and that no deduction ought to have been made. Lord Langdale, M. R.—"This is a mere question of quantum. I cannot deal with it." The taxation was therefore sustained.

### TAXATION.—RETAINER.—VARYING ORDER.

In collecting all the cases under the Law of Attorneys' Act, 6 & 7 Vict. c. 73, we have abridged the following from the Chancery Reports in the 14th volume of the *Law Journal*.—

A petition was presented by Lady Sandys, Maria Meryweather, Montague Turner, Marcus Turner, and Maud Meryweather, calling in question the correctness of the taxation of a bill of costs by the Taxing Master. It appears that Mr. Turner, deceased, Lady Sandys, and other persons petitioners, who were then infants, were plaintiffs in a suit. Messrs. S. & Co. were employed as solicitors; and in the course of the proceedings an indictment was preferred against some defendants for alleged perjury committed by them in their answers, and in which Messrs. S. & Co. acted as solicitors. The youngest of the infants came of age, and they all adopted the suit. The plaintiffs then changed their solicitors, and Messrs. S. & Co. delivered two bills of costs, one relating to and headed in the suit, and the other to the indictment, and headed "S. & Co."

A petition was presented for an order of course, for the taxation of the bills, alleging "that the petitioners employed Messrs. S. & Co. as their solicitors in this court; that Messrs. S. & Co. delivered to the petitioners their bills of fees and disbursements, which, as the petitioners were advised, contained many unreasonable and extravagant charges. The petitioners submitted to pay what should

<sup>a</sup> 12 Sim. 649.

appear to be due to Messrs. S. & Co. on the taxation of their said bills;" and an order was thereupon made referring it to the Taxing Master of the court in rotation to tax and settle the bills, &c. The petitioners' solicitors were not aware, when the order was made, that no retainer had been given for the prosecution of the indictment.

On attending before the Taxing Master, in pursuance of the order, it was insisted on the part of the petitioners that the Taxing Master had no authority under the order to tax the bill of costs relating to the indictment, inasmuch as the petitioners had never been liable to pay the same, and that all claims against any party in respect thereof was barred by the Statute of Limitations; but the Taxing Master decided against such objection, and made his report, whereby he found that the costs relating to the indictment had been incurred on the retainer of Mr. Turner, deceased, and with the knowledge of Lady Sandys and Maria Meryweather, but whether or not on their retainer, had not been shown to him; but he further found that the same were not incurred on the retainer of the other petitioners; and that the petitioners Marcus Turner and Maud Meryweather were then infants; and under the circumstances he submitted to the opinion and judgment of the court whether or not the petitioners were liable to pay the amount.

The petitioners then presented the present petition, praying "that they might be ordered to pay the first bill of costs only, and that, if necessary for this purpose, the certificate of the Master, the order, and the petition on which the same were founded, might be varied as the court should direct."

The Master of the Rolls decided that the Taxing Master had no power to vary the liability of the parties, and that they ought to have applied to the court to vary the order so obtained when they found the Master proceeding to tax the bills of costs. The petition was therefore dismissed.

*In re Springall*, 14 Law Journal, Chan. Rep. 12.

## LAW OF CONTRACTS.

### IMMORAL CONSIDERATION.—PROVISION TO A KEPT WOMAN.

IT is a general rule of law that no right of action can spring out of an immoral contract. Accordingly no court will lend its aid to a demand grounded upon such a consideration. For although it is true that the tribunals of this world do not in general enforce virtuous conduct, they on the other hand are careful not actually to sanction or give countenance to larceny. And this holds equally at law and equity. But in both jurisdictions a distinction is admitted between bonds given as the price or inducement for future prostitution, and bonds or obligations granted subsequently to intercourse as a compensation, (if such it may

be considered,) due in honour and good feeling to the object of seduction. Thus, for example, where a young woman has been ruined, and her seducer makes a pecuniary provision for her, the obligation thereby created is binding, and will be enforced against him with the greatest readiness; the case being one in which it would be in the last degree unjust to withhold the assistance of the court. But put the case of a bond entered into between a man and a woman, in consideration of the parties having mutually agreed to live together in sin. This would be void. *Walker v. Perkins*, 3 Burr. 1568: *Franco v. Bolton*, 3 Ves. 370. The great principle is to repress vice by taking away the temptation; and to protect individuals against the influence which artful women may acquire through the medium of the passions. This object the courts of this country, following therein the wise maxims of the Roman law, have studiously and uniformly endeavoured to attain, and in all their decisions they appear to have had it constantly in contemplation.

Where upon the face of it the instrument is plainly *pro turpi causa*, that is to say, probably invalid, it is not necessary or proper to resort to a court of equity to have it cancelled or delivered up; because, suppose an action in such a case brought upon the bond, the defendant would demur to that action, and therefore judgment would be against the plaintiff. *Gray v. Mathias*, 5 Ves. 294. A bill, therefore, filed in equity under such circumstances and for such a purpose, would be dismissed.

In the late case of *Hall v. Palmer*, 3 Hare, 532, a testator had bound himself by bond to secure an annuity to a woman with whom he had long cohabited, the annuity to commence from the death of the obligor. This bond was prepared by his solicitors, to whom he said, in reply to a question put to him by one of them, that he still maintained his connexion with the woman, and that it was not his intention to discontinue it. The evidence also showed that it was not broken off. Such being the case, the bond was left in the possession of these solicitors till the obligor's death; and the bill was filed by the woman against his executor, who, resisting the demand, contended that the fact of placing the bond in the hands of his own men of business showed that he meant to keep it under his control, so that it was fairly to be inferred that the future cohabitation constituted an element in the consideration of the bond, and if so, it was not obligatory; but Vice-Chancellor *Wigram* was of a contrary opinion, for his Honour, in delivering judgment, observed, that the bond was given in consideration of past cohabitation; and although the obligor at the same time stated "that he had no intention of breaking off the connexion, yet the reasonable construction of that language was, that he meant to maintain the woman in a manner not unlawful." His Honour held, moreover, that when once the bond had been sealed and delivered, its efficacy was complete; and the mere fact of keeping it in the hands of the obligor's solicitors, did not prevent it from

operating as an instrument binding upon that individual. This latter proposition may indeed be regarded as clear and settled law since the cases of *Doe d. Garmons v. Knight*, 5 B. & C. 671, and *Eaton v. Scott*, 6 Sim. 31.

But we must venture respectfully to doubt whether similar sufficient authorities can be found to support the position of the learned judge, that where a man has for a length of time kept a strumpet, and then gives her a bond, saying he has no thoughts of dismissing her, and accordingly does "continue the connexion," it shall be held that he means thereby to maintain her in a manner *not unlawful*. This we humbly think a most unreasonable construction. The presumption of the ecclesiastical courts in such a case would, we believe, be directly the other way. They would hold, and we apprehend the bulk of mankind would agree with them, that an improper connexion continued, must necessarily mean continued improperly. However the decision may stand on this ground, that inasmuch as the bond was granted for past and not for future cohabitation, the fact of the connexion (whatever might be its character) continuing, was immaterial.

If, on the other hand, we are to suppose that the character of the subsequent connexion is really deserving of judicial attention in dealing with this question, then we are humbly, but confidently at issue with the learned judge on the construction he has put upon the circumstances of the case. The presumption, we repeat, is, that the subsequent connexion was directly the reverse of that which the Vice-Chancellor has held it to have been. It began in sin, was maintained for years in sin, and ought to be presumed, in the absence of any evidence or allegation to the contrary, to have been persisted in sinfully to the end. Indeed, the express declaration of the testator himself can admit of no other sound interpretation.

## EQUITABLE DOCTRINE OF ADVANCEMENT.

### HOW FAR APPLICABLE TO CASE OF AN ADOPTED NEPHEW.

THE moral and religious obligation of a parent to provide for his children, has given birth to a principle in courts of equity, that where a man purchases an estate in the name of his son, the purchase will be deemed an advancement to the son, and not construed a resulting trust for the purchaser, as it would be were the purchase made in the name of a stranger. This presumption in favour of the offspring being founded in natural affection and moral obligation, as well as in religious duty, the court in general will not permit its operation to be neutralised without substantial and solid grounds to exclude it. The presumption that an advancement was intended in such a case will be sustained, unless it be rebutted by distinct, clear, and unequivocal evidence to the contrary. The rule is the same in the case of a wife, and of daughters. 1 Keen, 42-50.

And even in the case of an illegitimate child; for it has been decided long since that if a man make a purchase in the name of his bastard, it will be deemed a gift to the bastard, and not construed a resulting trust for the father. *Beckford v. Beckford*, Loft. 490, 3 Sug. V. & P. 262. It is to be observed, however, that to make it an advancement the child must be *unadvanced*. This is but a reasonable limitation of the general doctrine, and as old as the time of Lord Chancellor Nottingham, apparently the parent of it. On the other hand, a mere partial or trivial previous provision will not deprive the child of the benefit of the general doctrine. Accordingly, a child having only a reversion expectant on a life estate will be considered as unadvanced. Thus in *Lamplugh v. Lamplugh*,<sup>a</sup> a father having purchased a property in the name of his younger son, upon whom an estate was settled expectant upon his mother's death, and having afterwards taken the rents and profits during his life, his eldest son, upon his death, filed his bill against the younger, insisting that the latter both was a trustee for the father, and consequently for him the plaintiff; but the Lord Chancellor, advertent to the younger son's reversionary interest, observed, that he was nevertheless a son unprovided; for his mother might survive many years, and in that time he might starve if he were to have no other provision. In all these cases, so strong is the leaning of the court in the child's favour, that it would appear the burden of proving lies on the party seeking to impeach the child's claim; and although parole evidence of verbal declaration is admissible to support the deed, it seems inadmissible to create a trust against it.<sup>b</sup>

In a late case before Vice-Chancellor Knight Bruce,<sup>c</sup> the question arose how far the principles which we have now been discussing ought to be applied in the case of the nephew of a man's wife. The facts were, shortly, that Mr. and Mrs. Currant, being childless, adopted and took upon themselves the care of the infant son of Mrs. Currant's sister. They educated this child as their own, and undoubtedly intended to provide for him in after life; with a view to which ultimate object they from time to time made sundry payments in his name to two savings' banks in their vicinity. It appeared, however, that Mrs. Currant received interests on these deposits; but on one of these occasions she came to the bank and was paid a sum of interest, upon her stating that she wanted it for the use of the boy; and it appeared that she repeatedly made payments to the same account; and uniformly as the interest accumulated she had it added to the principal, and no change took place in the form of the investment. The boy moreover resided with Mr. and Mrs. Currant until he went to sea, which he did in the lifetime of Mr. Currant, who died in May 1835, having previously made his will, whereby he

<sup>a</sup> 1 P. Williams, 111.

<sup>b</sup> 3 Sug. V. & P. 264, and authorities there cited.

<sup>c</sup> *Currant v. Jago*, 1 Coll. 261.

bequeathed all his property to his wife and appointed her his sole executrix. In March 1836 the boy who had been the object of their care died—an infant and intestate, having in fact never returned from sea; and upon this state of matters Mrs. Currant not unnaturally became desirous to possess herself of the money which had been invested for the boy's benefit in the savings' banks. The boy's father, however, took out administration to his son, and accordingly claimed the amount as his legal representative. Mrs. Currant thereupon filed the present bill; and the cause having been fully heard, his Honour decided that the sums in question invested in the savings' banks were intended to be the money of the boy, and were vested in him by a legal title, a gift executed. It was strenuously urged by the plaintiff's counsel that the benefit contemplated by this couple to their nephew was contingent upon his surviving them both. Adverting to this argument, his Honour thought it possible that if their attention had been called to the subject, the gift would have assumed that shape; but the matter was not so arranged, and therefore the learned judge was of opinion that the administrator of the son was entitled to the fund, which he accordingly directed to be paid over to him.

## LORD ELDON'S OPINIONS ON LAW REFORM.

### PRACTICE AND PLEADING.

WHEN, on the 26th of March, 1833, the House of Lords were in committee on the bill for the amendment of the law, (now the stat. 3 & 4 W. 4, c. 42,) Lord Eldon objected to the provision for enabling the judges to make alterations in the rules of pleading, instead of the old practice of the Lord Chancellor calling on the judges to state their doubts as to the practice of their courts, and then, if he thought proper, undertaking to recommend the alterations to parliament; it was now proposed, and that too in a bill which stated doubts as to the power of the judges, that they should make rules in their own courts, which rules were to have authority for five years, and then to become the law. Why this was legislating, and this bill gave into the hands of the judges the power to make laws in very important cases. The practice of the courts was a part of the law of the land, affecting property and even personal liberty; and he protested, on the part of the subject, against giving to judges this extensive legislative power.

Towards the conclusion of the committee's sitting, Lord Eldon expressed his satisfaction that the arbitration clause had been withdrawn, as in his opinion it was of the most injurious and oppressive character. For fifty years, as a barrister, a judge, and a chancellor, he had been acquiring experience, and that forbade him ever to consent to compel suitors to submit to an arbitration. 3, *Life of Lord Eldon*, by Twiss, 194-5.

### PRIVY COUNCIL.—LOCAL COURTS.

In a letter to Lord Stowell, bearing the post mark of April 19, 1833, Lord Eldon says,—

"The Chancellor (Brougham) must think the Privy Council, as heretofore attended, has been a sad tribunal; for he has brought a bill into the House of Lords, in which he makes all the judges, and even the principal commissioner of the new Court of Bankruptcy, additional members of a committee of privy councillors to hear ecclesiastical appeals, prize court appeals, &c. &c."

"He has brought in another bill for establishing permanent courts in the different counties, with serjeants or barristers of ten years' standing constantly sitting, with juries, in like manner as the judges when they go the spring and summer circuits throughout the kingdom, each county, as it were, having through the year a county-Westminster-Hall of its own. This odd scheme is at first to be tried only in two or three counties, to see how it answers. I hope he won't select, as his trial or experiment, counties Durham or Dorset; perhaps you would not wish him to take Berks or Gloucestershire; but there are no lords attending the house upon such matters." 3, *Life of Lord Eldon*, 196-7.

## SELECTIONS FROM CORRESPONDENCE.

### PROPERTY AND INCOME TAX.

In the 9th rule, No. 4, Schedule A., of this act, immediately after sec. 60, appears the following: "*Ninth*, The occupier of any lands, &c., being tenant of same and paying said duties, shall deduct so much in respect of the rent payable to the landlord for the time being, (all sums allowed by the commissioners being first deducted,) as a rate of 7d. in the £l. would amount to, which deduction shall be made out of the first payment thereafter to be made on account of rent, and the receivers of her Majesty and all landlords, both mediate and immediate, &c. &c. shall allow such deduction upon receipt of the residue of the rent, under the penalty herein contained," &c. &c.

By sec. 103, the penalty for not allowing the deduction is 50*l.*, &c. &c.

The question raised is the following: Can the landlord insist on the receipt for the property tax being produced, and can he refuse to allow the deduction from the rent until he is so satisfied, and by so doing would he not render himself liable to the penalty mentioned in sec. 103, bearing in mind that under sec. 177 the tenant incurs a penalty of 20*l.* if he avoids payment of the tax by removal; and in the event of the tenant removing without paying, would the landlord be liable?

AN ARTICLES CLERK.

### EXAMINATION PRIZES OR DISTINCTIONS.

MR. EDITOR.—It has always appeared to

me that if the proper authorities were to decide upon giving away prizes to the most proficient candidates at examinations, a great deal of good, both to the public and the profession generally, would ensue, for the desire of distinction invariably stimulates the student to exertion, and incites him to do the best he can. On the contrary, the knowledge that however hard he may work he will be classed on an equality with those whom he well knows to be far his inferiors in legal attainments, damps his energies, and makes him feel careless about adding any further knowledge to the stock he already possesses, well knowing he is quite competent to pass.

Now if this state of affairs was altered, the candidates would pay more attention to their studies, and would, as a matter of course, make better lawyers, and the public would have some criterion whereby to judge of the merits of each. Some argue that one who is master of his profession invariably succeeds in it better than one who is not. Granted, this may be the case sometimes; but it far oftener happens that a man with less real knowledge, by means of assurance and counsel's advice, is more successful in his profession than he who is really the most competent man, but who too frequently has not that great essential, assurance: for studious habits and assurance are seldom companions.

I have, perhaps, trespassed rather too long on your attention, but I cannot refrain from expressing it as my opinion, that the advantages to be obtained by the granting of distinctions would far counterbalance any supposed disadvantages to arise from the same.

LEGULEIUS.

#### SOLICITING PATENTS.

It has become of late years a very common thing for numerous patent agents, as they are called, to solicit patents, in many of which the grossest blunders have been committed. Why should not a representation be made to the Attorney General of the irregularity, and thus procure a correction of the evil? It is clear that none but professional men are entitled to act in such matters, and that unqualified agents are not entitled to recover in a court of law the enormous fees charged by them.

A.

#### LIBERALITY OF LAWYERS.

We gladly insert the following communication from an esteemed correspondent:—

The munificent donation and bequest of Mr. Jonathan Brundrett to the University of London is well known.

The late Mr. Thorp, of Alawick in Northumberland, brother of Archbishop Thorp, D.D., Warden of Durham University, by a testamentary bequest, established a scholarship in that university.

Mr. Ralph Lindsay has also founded a like scholarship of 40*l.* a year in the same university,

for natives of the diocese educated for three years at the Durham Grammar School, tenable for four years.

We must not omit, also, the kindness and liberality of the late Mr. Hobler, of the Lord Mayor's Office, towards the City of London School, on the site of Honey Lane Market, established under the 4 & 5 Wm. 4, c. 35, to carry out the benevolent intentions of Mr. John Carpenter, formerly a solicitor and Town Clerk of the City of London, who, by his will, founded four scholarships, and charged his estates, known as "The Carpenter Estates," with the burthen thereof.

#### JUNIOR COUNSEL.

I understand that the professional business of an eminent Queen's counsel has increased to such an extent that he has for some time felt it necessary to engage the assistance of a junior barrister, who reads all his briefs and prepares an epitome of the facts and evidence previously to the cause coming into court. The late Sir John Leach, and other eminent men, while at the bar pursued a similar course, with much advantage, and with a great saving of time and labour to themselves.

It strikes me that it would be desirable that the names of the juniors at present so engaged should be known, for in many cases the parties would, for their own interest, retain them as juniors.

AN ATTORNEY.

[There may be some question on the propriety of this proposal, lest a novel kind of patronage should fall into the hands of the leaders of the bar, to the prejudice of junior counsel in general.—*Ed.*]

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

##### EXCHEQUER COURT.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

##### PRACTICE.—MORTGAGOR AND MORTGAGEE RECEIVER.

*The court will not, at the instance of a defendant, appoint a receiver at the hearing of the cause, if the bill contain no prayer for a receiver, and the question is not raised by the answers.*

THIS suit was instituted by a mortgagor for redemption. There were two mortgagees, and prior to the filing of the bill the second mortgagee was in possession, but in consequence, as was stated in his answer, of its being represented that the first mortgagee had executed a power of attorney by which the mortgagee was authorised to take possession on his (the first mortgagee's) behalf, he was induced to give up such possession. It was also alleged that the

mortgagor obtained the possession by misrepresentation, and instead of paying the rents to the first mortgagee, had applied them to his own use, so that the second mortgagee was not only prevented from reducing his debt, but the prior incumbrance was increased by an accumulation of interest. Under these circumstances, the second mortgagee applied, at the hearing of the cause, for a receiver; but there being no prayer for a receiver in the bill, and the question not being raised by the answers, it was objected, on the part of the mortgagor, that the order could not be made, and the cause was ordered to stand over for the purpose of ascertaining whether there were any authorities upon the subject.

Mr. Temple and Mr. Lovatt, for the second mortgagee, now admitted that they had been unable to find any similar case, but stated that it was laid down both in Daniel and Smith's Books of Practice, that upon the hearing of the cause, when the court had all the circumstances before it, a receiver might be appointed, and Mr. Maddock, in his work on Equity, said a receiver might be appointed before or after an answer, if prayed for by the bill, and after a decree, though not prayed for by the bill, if the court thinks it necessary. [*The Master of the Rolls*.—Is it said that in any case such an order had been made at the instance of a defendant?] There was no direct authority, but the case was analogous to that of an injunction, which would not be granted upon an interlocutory application, if not prayed for by the bill, but was granted at the hearing, if the circumstances of the case required it. So after a decree for foreclosure, and before the foreclosure was complete, the court would interfere to prevent the cutting of timber. They cited *Wright v. Atkin*, 1 Ves. & B. 315; *Osborne v. Harvey*, 1 Yo. & Col. N. S. 116.

The Master of the Rolls said, it might be very convenient to make the order asked for, but he did not recollect any instance of such an order being made on the application of a defendant. He would, however, make further inquiry as to the practice before he finally decided.

*March 4th*.—His lordship said he had made the inquiry, but he could find no instance where such an order had been made adversely on the application of a defendant.

*Barlow v. Ganys*, February 25th and March 4th, 1845.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### MORTGAGOR AND MORTGAGEE.—REDEMPTION.

*Where the proviso for redemption in a mortgage deed fixes a particular day for repayment of the money advanced, the mortgagor has no right, without the assent of the mortgagee, to pay off the amount secured before*

*the day fixed for redeeming, although he may be willing to pay interest up to the day appointed by the proviso.*

THIS was a bill filed by the mortgagor of certain leasehold premises, situate at Lambeth, and it prayed that an account might be taken of the principal and interest due on the mortgage security given by the plaintiff to the defendant, and that upon payment of what should be found due to the defendant for such principal and interest, the plaintiff might be held entitled to redeem, and that the defendant might be ordered to deliver up possession of and assign the mortgaged premises to the plaintiff. The bill stated that by an indenture of mortgage, dated the 1st of April, 1844, which recited, that the plaintiff having occasion for an advance of 1,000*l.*, the defendant had agreed to lend him the same, and that it was agreed that the 1,000*l.* should be applied in part discharge of a former mortgage of 1,200*l.*, the plaintiff assigned the premises in question for the residue of the term for which he held the same to the defendant, subject to the proviso, that if the former mortgagee and the plaintiff paid to the defendant the 1,000*l.* on the 1st of April, 1845, and interest thereon, in the mean time, at the rate of 5 per cent. per annum, by equal quarterly payments, together with all costs and expenses which the defendant might have incurred on account of the premises, or in carrying the thereinbefore-mentioned trusts into execution, then that the defendant would, at the request, costs, and charges of the person making such payment, assign the mortgaged premises to him, or as he should appoint, subject, however, to such equity of redemption as should be subsisting therein in respect of the former mortgage. On the 18th of November, 1844, the plaintiff having paid the former mortgagee the balance due on his mortgage, he, by an indenture of that date, released and assigned to the plaintiff the mortgaged premises, and also his debt of 1,200*l.*, and all interest, costs, charges, and expenses in respect thereof; and on the 29th of November, 1844, the plaintiff, with the consent of the defendant, granted a lease of a portion of the premises for a premium of 250*l.*, which the defendant received in part discharge of his loan. Shortly after the grant of this lease, the plaintiff having an advantageous offer for the purchase of the property, was desirous of paying off the defendant's mortgage, and caused a re-assignment of the premises to be tendered to the defendant for his execution, together with the balance of the principal money remaining due upon his mortgage, and interest up to the 1st of April, 1845, the day appointed by the proviso for redemption for repayment of the money advanced. The defendant, however, refused to accept the amount tendered until the time stipulated by the proviso, insisting that as he had lent the money for investment, and it would be inconvenient for him to receive it before the time appointed for repayment, he was not bound to comply with the plaintiff's demand. The plaintiff thereupon filed the present bill, to which

the defendant demurred for want of equity, and the demurrer now came on for argument.

Mr. *Stuart* and Mr. *Müller*, in support of the demurrer, contended that the plaintiff must be bound by the terms of his contract, which were, to pay the sum advanced, and interest, on the 1st of April. It would be the height of injustice if a mortgagee were compelled, at the whim or caprice, or because it suited the purpose of a mortgagor, to take his money back within a few days after he advanced it. In most cases the advance was made for investment, and it might be extremely inconvenient, as it was in this case, to have the money suddenly returned. Nor was it any answer to say that the interest would be paid up to the time appointed for repayment, for if the principle contended for by the plaintiff were admitted, a mortgagee might, if the funds fell 10 per cent. a few days after he obtained the money, pay interest at 5 per cent. for a twelvemonth, and yet be a gainer of 5 per cent. upon the sum advanced. In this case also there was no jurisdiction for a court of equity to interfere; the equity of redemption, which was the sole foundation for an application to this court, had not arisen, inasmuch as there had been no default, and the plaintiff's remedy, if any, was at law, in the same manner as a mortgagor was entitled to proceed before courts of equity established the doctrine founded upon the right to redeem. Besides which, the bill did not allege that any tender had been made of any costs.

Mr. *Wakefield* and Mr. *Steer*, contra, urged that the advance by the mortgagee could only be looked upon as a debt, and the assignment to him as a pledge, and that when the debt was paid there was an end of the pledge, and the mortgagor was entitled to be put in the same situation as when the pledge was created. In this case also the consideration upon which the defendant relied had been broken, for he had accepted a part of his mortgage money, and the contract could no longer be considered entire.

The Vice-Chancellor said it would be attended with extreme inconvenience if mortgagors were allowed to adopt the course proposed by the plaintiff, and he should allow the demurrer, with costs.

*Brown v. Cole*, February 13th, 1845.

Vice-Chancellor *Wigram*.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

PRACTICE.—CONTEMPT.—EXCEPTIONS TO MASTER'S REPORT.

*A party who is in contempt for non-payment of costs, is intitled, notwithstanding, to file and set down exceptions to the report, this being deemed by the court as purely an act of resistance.*

*Motion to take the exceptions off the file refused, with costs.*

W. M. WYLLIE was in contempt for non-payment of costs in certain collateral pro-

ceedings in the cause. In this situation he filed his exceptions to the Master's report, both upon his own behalf, and on that of other defendants who appeared to be in the same interest, the latter being infants, of whom he acted as guardian. He obtained, also, an order for setting down their exceptions.

Mr. *Teed* and Mr. *Hargrave* moved to take the exceptions off the file for irregularity, and also to discharge the order for setting them down.

Mr. *Rolt* opposed the motion, upon the ground that it would be an act of the grossest oppression towards a party in contempt for non-payment of costs, to prevent him from filing and setting down exceptions to a report, which was hostile to his interests, or to those of whom he was guardian. The following cases were cited:—*Vowles v. Young*, 9 Ves. 172; *Wilson v. Bates*, 3 Myl. & Cr. 203; *King v. Bryant*, Ibid. 191; 1 Dan. Ch. Pr. 655; *Plumbe v. Plumbe*, 3 Yon. & Col. 622; *Bickford v. Skewes*, 10 Sim. 193.

Sir *James Wigram*, V. C.—I do not entertain the least doubt of the practice, that where a party is in contempt, merely for non-payment of costs, he is at liberty to defend himself against any proceeding which may be instituted against him by the plaintiff. Now, this is that case; it is not the case of a defendant who, being in contempt, is seeking to prosecute it for his own benefit. Up to the filing of these exceptions, his conduct was merely that of pure resistance. If, as I suppose, nothing less than the setting down of the exceptions would be an answer to the plaintiff's application to confirm the report, then the whole of this motion falls under the same observation. The parties may speak to the point again if they wish it. The plaintiffs admitting that merely filing the exceptions would not be an answer to the application to confirm the report, the motion must be refused, with costs.

*Morison v. Morison*, M. T., 1844.

Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

MONEY HAD AND RECEIVED.—ATTORNEY.—BANKRUPTCY.

*A. had brought an action against B., and a judge had directed proceedings to be stayed on payment of 17l. by A. to B. C. the attorney for A., sent his check for 20l. to the defendants, who were his agents in London, directing them, out of the proceeds, to pay the sum of 17l. to B. The defendants retained the whole 20l. for money due from C. to them. B. brought an action for money had and received against them, and the jury at the trial found that the defendants received the money with a full knowledge that part was to be appropriated to pay B.'s claim: Held, that there was not, under the circumstances, sufficient pri-*



*city of contract between B. and the defendants to support the action.*

**ASSUMPSIT.** The declaration contained two counts, one for money had and received, and the other on an account stated. Plea, non assumpsit. An action had been brought by one Cutbrush against Cobb, the present plaintiff, in which Beck had acted as the attorney of Cobb. In that action an order was made by Mr. Justice Coleridge to stay further proceedings on payment of a sum of 17*l.* by Cutbrush to Cobb. Dally, the attorney in the country for Cutbrush, inclosed a check for 20*l.* to his agents in London, Messrs. Flower and Beck, the defendants, directing them to apply 17*l.* in discharge of the debt from Cutbrush to Cobb. Dally afterwards became bankrupt, owing the defendants a considerable sum. The defendants received the check, and refused to pay the sum of 17*l.* over to the plaintiff Cobb, on the ground that there was a debt due from Dally to them, and they claimed to retain the money in discharge of the debt so due. At the trial a verdict was found for the plaintiff, and the jury finding that the defendants received the check from Dally with a full knowledge that part of the proceeds was to be applied in discharge of a debt from Cutbrush to the plaintiff. The learned judge reserved leave for the defendants to move to enter a nonsuit. A rule to that effect had been obtained.

Mr. Martin and Mr. Butt showed cause.

Under the circumstances of this case, the action for money had and received is maintainable, and the plaintiff is entitled to retain his verdict. If A., in order to discharge a debt due from him to B., pays the money to an agent in London for the express purpose of its being paid to B., and the agent receives it with the full knowledge of that fact; B. can maintain an action for money had and received against the agent in London. The jury in this case have found as a fact, that the defendants received the money with a full knowledge how the money was to be applied, and in their letter acknowledging the receipt of the money, they assent to the appropriation of the money in the manner directed by Dally. The case of *Lilly v. Hays*,<sup>a</sup> is an authority in favour of the plaintiff. It was there held that the defendant having received the money for the plaintiff, the action would lie; and that on the defendant failing to pay, the plaintiff might sue him for money had and received, and that the defendants could not allege a want of consideration moving from the plaintiff to him.

The money is paid by Dally to the defendants under a judge's order for a particular purpose, and they cannot retain it in discharge of their own debts. There is no privity between the defendants and Dally, the latter is the mere conduit-pipe made use of by Cutbrush, for the purpose of transferring the money into the hands of the plaintiff. The case of *Moody v. Spencer*<sup>b</sup> is an authority in point.

There the bankrupt brought an action, in which B. acted as his attorney, and the sum due to the bankrupt was paid to the defendant in London, who was the town agent of B.; and it was held that the assignee of the bankrupt could recover from the defendant in an action for money had and received, and that he could not retain the money for the general balance due to him from B. the country attorney.

Mr. Keating, contra.

There is no privity between these parties, so as to support an action for money had and received, and the fact that the defendants knew that the money was intended to be paid over to the plaintiff cannot make any material difference. There must be some assent on the part of the defendants that they hold the money for the use of the plaintiff, in order to raise an implied promise to pay. The defendants received the money from Dally, the attorney in the country, and they act as his agent. The case of *Scarce v. Whittington*,<sup>c</sup> shows that there is no privity between the town agent and the country client, and that according to the usual course of proceedings, if an agent in London transacts business for an attorney in the country, he looks to the attorney for payment, and not to the principal. Suppose, after the receipt of the money by the defendants, they had become bankrupts, or the money while in their possession had been destroyed by fire, Dally would not in either case have been discharged from the debt. In *Williams v. Beerett*,<sup>d</sup> the defendant received a bill, the amount of which when due he was directed to pay to the plaintiff and others, and it was contended that as soon as the bill became payable, the amount became by operation law money had and received, to the use of the plaintiff and the other persons specified, but the court was of a different opinion, and nonsuited the plaintiff. The following cases were also relied on, *Sudler v. Evans*,<sup>e</sup> *Stephens v. Badoock*,<sup>f</sup> *Sims v. Brittain*,<sup>g</sup> *Sims v. Bond*,<sup>h</sup> *Danford v. Shuttleworth*.<sup>i</sup>

Cur. ado. vult.

Lord Denman, C. J., (delivered the judgment of the court.)

An action had been commenced by Cutbrush v. Cobb, in which Beck, (one of the present defendants,) acted as the attorney for the defendant, and an order was made by a learned judge to stay further proceedings on the payment of the sum of 17*l.* to the defendant Cobb. Dally, the attorney for Cutbrush, sent his check for 20*l.* to the defendants, requiring them to apply 17*l.* in discharge of the debt from Cutbrush to Cobb. The defendants acknowledged the receipt of the money, and the jurors have found that they received the money with a full knowledge that part of it was to be paid over to the present plaintiff. Under these circum-

<sup>a</sup> 2 B. & C. 11.

<sup>c</sup> 14 East, 582.

<sup>d</sup> 4 Burr. 1984.

<sup>f</sup> 3 B. & Ad. 354.

<sup>g</sup> 4 B. & Ad. 375.

<sup>h</sup> 5 B. & Ad. 839.

<sup>i</sup> 11 Adol. & Ellis, 926.

<sup>b</sup> 5 Adol. & Ellis, 548. <sup>b</sup> 2 Dowl. & Ry. 6.

stances the court is of opinion that no privity has been made out between the plaintiff and the defendants, so as to enable the plaintiff to support an action for money had and received. If Cutbrush or Dally had forwarded the money to the defendants, and directed specifically how the money was to be appropriated, the defendants would have been accountable to the plaintiff for the amount so received, but we are of opinion that there has been no specific appropriation by the defendants to the use of the plaintiff. The cases of *Lilly v. Hays*,<sup>1</sup> *Sims v. Bond*,<sup>2</sup> *Sims v. Brittain*,<sup>3</sup> and *Williams v. Everett*,<sup>4</sup> were quoted in argument, but they are not strictly applicable. If it could have been made out, as was contended on behalf of the plaintiff, that Dally was the mere conduit-pipe, or hand, by which the money was transferred from Cutbrush to the defendants to be paid to the plaintiff, our decision would have been different, but we are of opinion that the facts of the case do not justify us in drawing such a conclusion. This rule must therefore be made absolute for a nonsuit.

Rule absolute to enter a nonsuit.

*Cobb v. Beck and another.* Sittings in banco after H. T., 1845.

Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

PRACTICE.—IRREGULARITY.—MOTION TO SET ASIDE PROCEEDINGS.

*Where, in vacation, the defendant's goods are seized under an irregular writ, and an unsuccessful application to set aside the judgment and execution is made at chambers, a motion on the 15th day of the ensuing term to set aside the proceedings, is out of time.*

A RULE had been obtained, on the 15th day of term, to set aside the judgment and subsequent proceedings, for irregularity. The declaration had been filed and notice served on the 2nd August, and on the 10th August judgment was signed for want of a plea. Execution issued, and the amount of the debt and costs was levied on the 21st August. A summons to set aside the proceedings was thereupon taken out at chambers, before Gurney, B., but that learned judge refused to interfere.

*Burham*, who showed cause, admitted, on the authority of *Morris v. Hancock*, 1 D. P. C. N. S. 390, that the judgment was signed too soon, but contended that the application was out of time, and the irregularity waived. The motion should have been made within a reasonable time. The general rule is, within eight days after the irregularity complained of. Where an unsuccessful application has been made at chambers in vacation, it is said in *Lush. Pract.* 403, that a motion to the same effect to the court should be made within the first four days of the ensuing term.

*C. Edwards*, contra.—No authority is cited for the practice, and no case decides that the motion should be made within four days. The criterion is, whether a fresh step has been taken, or whether the other side have been prejudiced by the delay. In *Brooks v. Hodson*, 8 Scott, N. R. 223, a motion, on the 25th April, to set aside an execution levied on the 1st March, was held in time.

*Patteson, J.*—That was under peculiar circumstances. There a bankruptcy had intervened.

*C. Edwards*.—The defendant having given notice, and the money having been paid over, he was not bound to come within eight days.

*Patteson, J.*—I think this application was too late. I do not say that the defendant should have less time because of the application at chambers, but I do not think fifteen days a reasonable time.

Rule discharged with costs.

*Austin v. Davey.* Q. B. P. C. M. T., 1844.

ATTORNEY.—STRIKING OFF THE ROLL.—CONVICTION.—RECORD.

*To support a motion to strike an attorney off the roll, on the ground that he has been convicted of an aggravated conspiracy, it is necessary to produce the record of such conviction, or an examined copy of it.*

*F. Robinson* moved on behalf of the Incorporated Law Society, to strike an attorney named King off the roll of this court. The ground on which he moved was, that the party against whom the application was made had been tried for an aggravated conspiracy, and convicted and sentenced to imprisonment. The offence was not only one of moral turpitude, but importantly affected the professional character of the individual guilty of it. [*Patteson, J.*—Have you the proper materials? Have you the record of the conviction? I move on an affidavit that the party has been convicted. [*Patteson, J.*—That is not sufficient. I think you ought to have the best evidence of the conviction, the record itself, or an examined copy of it.] Leave may possibly be granted to draw up the rule on reading the record.

*Patteson, J.*—That cannot be done unless the record exists, that is, unless it be drawn up in form, which is not generally the case. The record must be drawn up, and an examined copy of it then produced, or the rule may be drawn up on reading the record.

The record was subsequently produced.

Rule granted.

*Re W. H. King.* Q. B. P. C. M. T., 1844.

Eschequer.

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

INTERPLEADER.—JURISDICTION.

*Where a sheriff applies for relief under the Interpleader Act, a judge at chambers has no power to decide the matter in a summary*

<sup>1</sup> 5 Adol. & Kils, 546. <sup>2</sup> 5 B. & Ad. 389.

<sup>3</sup> 4 B. & Ad. 375. <sup>4</sup> 14 East, 582.

way, unless by consent of all parties, and such consent should appear on the face of the order. But where an invalid order was made, and the parties acted under it, the court held that it was binding as an adjudication upon a matter submitted to the judge.

THIS was an action against the sheriff of Nottinghamshire, for a false return of *nulla bona* to a writ of *fiery facias* issued by the plaintiff, on a judgment obtained by him against one Smith. The only plea was "that Smith was not possessed of the goods upon which the levy was made." At the trial, before *Coltman, J.*, at the last Nottinghamshire assizes, it appeared that after the sheriff had seized the goods in question, a claim was set up by a third party, upon which the sheriff applied for relief under the Interpleader Act, and the following order was made by *Rolfe, B.*, at chambers:—

"Upon hearing the attorneys or agents for the plaintiff, and also for the sheriff and the claimant, and upon reading the affidavits of, &c., I do order that the sheriff withdraw from possession, and I do adjudge the goods seized to be the goods of the claimant; and I do further order and direct that the plaintiff pay the costs of the claimant and also of the sheriff."

The sheriff accordingly withdrew from possession, and the costs were paid as directed by the order. It was objected, on the part of the plaintiff, that a judge at chambers had no jurisdiction to make such an order, unless by consent, and that such consent should appear on the face of the order. The learned judge told the jury that in his opinion the order was final and conclusive, as an adjudication upon a matter submitted to him. A verdict having been found for the defendant, a rule *nisi* was obtained to set aside the verdict on the ground of misdirection.

*Whitehurst* showed cause.—The learned judge had jurisdiction to make the order. The 1st section of the Interpleader Act, (1 & 2 Will. 4, c. 59,) which relates to an application by a defendant, enables the court to direct an issue, "or with the consent of the plaintiff and such third party, their counsel or attorneys, to dispose of the merits of their claims, and to determine the same in a summary manner." But the language of the sixth section, which applies to sheriffs, is sufficient to enable the court to dispose of the matter in a summary way, without the consent of the parties. It authorises the court to call the parties before them, "and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers thereinbefore contained, make such rules and decisions as shall appear to be just according to the circumstances of the case." The power there given to the court was extended to a judge at chambers by the 1 & 2 Vict. c. 45, s. 2. [*Parke, B.*—It is clear that we cannot dispose of the rights of parties upon affidavit without their consent.] The consent need not appear on the face of the order. *Muskett v.*

*Drummond*, 10 B. & C. 157, and *Christie v. Unwin*, 11 Adol. & E., may perhaps be cited as authorities to the contrary; but those were cases of orders in bankruptcy, where the Lord Chancellor does not act as a court, but as an ordinary individual upon whom the bankruptcy jurisdiction is conferred. The distinction is well established, that where proceedings are in an inferior court, it is necessary to state the facts which give the court jurisdiction, but it is not so where the proceedings are in a superior court, for in that case it shall be intended that they have jurisdiction. *Peacock v. Bell*, 1 Saund. 73. [*Alderson, B.*—If it is contrary to the course of common law it is a limited jurisdiction.] In an order made under the statute of Anne, which gives to the court or a judge the power of allowing a defendant to plead several matters, it is not necessary to set out all the proceedings on the face of the order. [*Parke, B.*—There nothing is required but the order of the court.] Assuming the order to be defective in that respect, all parties have acted under it, and the plaintiff is therefore estopped from disputing it. If the plaintiff meant to repudiate the order, he should have given the sheriff notice to that effect; but instead of so doing he pays to the sheriff and the claimant their costs, in compliance with the terms of the order. Suppose, at the time of the levy, the plaintiff had come and admitted that the goods seized belonged to the claimant, he would have been clearly estopped from disputing the sheriff's return. Having submitted to the determination of the judge, he is equally bound by it. *Gregg v. Wells*, 10 Adol. & E. 90.

*M. D. Hill* and *Mellor*, in support of the rule.—The submission by the plaintiff to the order is not conclusive. An agreement by consent may be strong evidence, but it does not bind the party if made under a mistake of law or of fact. A receipt is evidence of payment, but the party giving it may, nevertheless, prove that the debt has not been paid. [*Parke, B.*—All parties agree that the matter shall be determined by the judge. He is then in the situation of an arbitrator, and his decision binds them.] That may be so in the case of a voluntary submission, but this is a hostile proceeding on the part of the sheriff, and if the plaintiff had been aware that he could withhold his consent, he would perhaps have done so. [*Parke, B.* The clear intention was, to decide whether the goods to which the order related could be taken in execution.] A party declared bankrupt surrenders to the fiat, but if it is afterwards found to be invalid, he is not estopped from disputing it. So where land is recovered by ejectment, the defendant submits to the execution; but if within twenty years afterwards he discovers that there is error in the proceedings, he is not precluded from suing out his writ of error. The submission to this order is no more than a respectful obedience to the law, but is not conclusive.

*Parke, B.*—None of us have any doubt but that the order is conclusive, not as a valid order under the Interpleader Act, but as an

adjudication upon a matter submitted to the judge. The judge had no power to make such an order unless by consent, and though the consent does not appear on the face of the order, yet there is evidence of it, for the parties acted under the order. The question submitted to the judge was, whether the parties had a right to insist upon the sheriff going on and selling the goods; the judge decided that the sheriff should not sell, but deliver up the goods, and that the plaintiff should pay the costs; that was accordingly done, and the parties, having acted under the order, are bound by it.

*Alderson, B.*—I am of the same opinion. All parties agreed that the subject of dispute should be determined by the judge, and he has determined it.

*Rolfe and Platt, Bs.*, concurred.

*Harrison v. Wright.* Exchequer. Sittings after Hilary Term, 21st Feb. 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

### ALLOWANCES.—BROKERAGE.—LIABILITY OF EXECUTOR.

As it is of great importance to executors to avoid all expenditure which would be disallowed on taking their accounts before a court of equity, we apprehend a short summary of certain points determined with reference to the transfer of a testator's stock may prove useful. In *Hopkinson v. Roe*, 1 Beav. 183, the costs of transferring stock from the name of a testator into the names of his executors were disallowed, the court considering that the stock ought to have been transferred directly by the executors into the names of the legatees or purchaser, without incurring the expense of the intermediate transfer. In the same case, exceptions were taken to the Master's report, for allowing only one guinea for commission to a broker on transferring a large amount of stock into court. In support of the Master's report, the plaintiff argued that the employment of a broker was only for the purpose of identifying the parties, and that such a course was unnecessary where money was paid *into court*, as the Accountant-General's broker, whose charge was only one guinea, might have been employed; and that upon such occasions one guinea only was allowed by the universal practice of the Master's offices. And of that opinion was Lord Langdale, M. R. Another point of this nature, but attended with an opposite result, occurred in *Jones v. Powell*, 6 Beav. 488, where certain sums, amounting altogether to 96*l.* 12*s.*, had been paid by the executor to stockbrokers, after the rate of 1-16th per cent. for attending at the bank to identify the executor, upon the occasions of transferring stock to a legatee. This was sworn by five stockbrokers to be a proper and usual charge; and one of them said, that, according to the rule of the Bank of England, the executor would not have been allowed to make the transfer without

a sworn broker or his agent being present to identify the executor as a proper person to make the same. Lord Langdale, M. R., determined that the whole amount of 96*l.* 12*s.* ought to be allowed; and the exception to the Master's report, by which only 16*l.* 16*s.* was allowed, was accordingly sustained.

### IMPUTATIONS AGAINST A CLERGYMAN.

From the decision of Sir Herbert Jenner *Fust*, in the recent case of *Burder v. —*, 3 Curtis, 822, it would appear that a mere imputation of incontinence, (that is to say, simply a *mala fama*, without more,) is a good ground for a proceeding in the ecclesiastical court against a clergyman, with a view to his suspension or deprivation. The following are the remarks which fell from the learned judge in pronouncing his decision:—"The reverend individual in question is the chaplain of a jail; and in course of his duty in that office a person was committed to his care and superintendence; and the charge is that of vicious propensities existing and to be proved by overt acts. Surely no clergyman can be suffered to remain in the cure or possession of an ecclesiastical benefice, whilst labouring under such an imputation as these articles charge. It may be mere report; but still it is a scandalous report; and it arises out of conduct. I should like to know how parishioners can receive the communion, hear the prayers of the church read, or receive consolation in their dying moments, from one labouring under such imputations as are here alleged? Must not the effect be that the parishioners, from actual disgust, which must arise from the imputation whilst unrefuted, will abstain from any communication with the party; and if he be allowed to remain in his benefice, will not the effect be virtually to deprive them of those spiritual offices and benefits which they are entitled to expect and require at the hands of their minister? I am therefore of opinion, both upon principle and upon the authority of cases, that the court has jurisdiction to examine into this case for the purpose of suspension and deprivation, provided the charges be substantiated in evidence, and I accordingly admit these articles to proof."

What is the precise import of this decision, it may perhaps be not very easy to say. Does the learned judge mean to lay it down that the mere *mala fama* or evil report, will of itself be sufficient to justify a sentence of suspension or deprivation? If so, (and this we really take to be his meaning), the consequences may be very serious to clergymen. On the other hand, if he intended only to affirm that such sentence would follow upon proof of the *truth* of the imputation or report, there would then, we apprehend, be little novelty or value in the proposition derivable from this determination. We can easily conceive a case of imputations maliciously spread against a clergyman, who, although innocent, might find it impossible or difficult to disprove them. There is no doubt that his usefulness would thereby be impaired;

but it would in our opinion be the most monstrous injustice to visit him under such circumstances with a sentence of suspension or deprivation.

#### PRINCIPLE OF THE OLD, AND OF THE NEW STATUTES OF LIMITATION CONTRASTED.

The Statute of Limitations, 21 Jac. 1, c. 16, takes away the remedy against the debtor, unless proceedings are instituted within six years after the cause of action arises. But while it thus cuts off the judicial remedy it leaves the creditor's right unaffected. The debt is still due. And herein we are to discriminate between the act of James and the more recent Statute of Limitation, 3 & 4 W. 4, c. 27, by which last the right as well as the remedy is extinguished. Thus it is settled law, that if a creditor by means of a lien can pay himself without resorting to an action, he may lawfully do so. There is nothing in the statute of James to prevent him. *Spears v. Hartley*, 8 Esp. 81; *Higgins v. Scott*, 2 B. & Ad. 413. Upon this principle Vice-Chancellor Wigram, in a late case, *Courtenay v. Williams*, 3 Hare, 539, held, that an executor was entitled to retain so much of a legacy as was sufficient to satisfy a debt due from the legatee to the testator's estate, although that debt was barred by the 21 Jac. c. 16, a decision arrived at after much consideration, and an anxious review of authorities.

#### PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

##### Royal Assents.

March 18th.

Stamp Duties Assimilation.

##### House of Lords.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment.  
Debtors and Creditors.

#### BILLS FOR SECOND READING.

Actions on Death by Accident.

See the Bill, p. 400, ante.

Deodand Abolition. See p. 400, ante.

Divorce, Privy Council. See p. 401, ante.

City of London Trade.

#### TO BE REPORTED.

Bail in Error in Misdemeanors.

Service of Common Law Process Abroad.

Service of Scotch Process Abroad.

Service of Irish Process Abroad.

#### THIRD READING.

Companies' Clauses Consolidation.  
Property Tax.

#### PASSED.

Jewish Disabilities. See p. 401, ante.

Adjourned to Thursday, 3rd April.

#### House of Commons.

#### NOTICES OF NEW BILLS.

Abolishing Punishment of Death.  
Prisoners' Counsel.  
Inclosure of Commons.  
County Rates.

#### BILLS FOR SECOND READING.

Clerks of the Peace.  
Medical Practice.  
Roman Catholics' Relief;  
Poor Law Settlement.  
Jewish Disabilities.

#### BILLS IN COMMITTEE.

Consolidation of Railway Clauses.  
Land Clauses Consolidation.  
Bastardy.

#### BILLS PASSED.

Railway Clauses Consolidation.  
Land Clauses Consolidation.

#### PRIVATE BILLS.

Resolved, That in the case of every petition for a private bill, on which the committee on petitions shall not have reported previously to the adjournment of the House for the Easter Recess, the time for reading such private bill the first time, be extended till Friday the 11th day of April.

#### ATTORNEYS' CERTIFICATE DUTIES.

Petitions for the repeal of this duty have been presented from  
The Incorporated Law Society, and from  
Boston, and  
Axholme.

The House adjourned from the 20th to Monday 31st March.

#### THE EDITOR'S LETTER BOX.

We are glad our old correspondent X. Y. Z. has again taken pen in hand, and we shall consider his communication on *Anti-Law Reform*. We have no doubt he expresses the feelings of the profession generally.

We are particularly obliged by the friendly zeal of T. W. H. His suggestion accords with our own opinion, and we hope to carry it into effect at an early period.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 29, 1845.

—"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### CONSPIRACY.

THE doctrine as to conspiracy seems to have been somewhat fluctuating of late. The general principle on which it was founded was, that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury as requires criminal restraint, although this would not be necessary were the same thing proposed, or even attempted to be done by any person singly. This principle extends not merely to a confederacy to commit a crime, but also to the causing hurt or prejudice to the public or to a private person, although neither the effecting that object, nor the use of the proposed means to effect it, would constitute a substantive crime.<sup>a</sup> This is wide ground, and a disposition has been shown to narrow it. "I should be sorry," said Lord *Ellenborough*, C. J.,<sup>b</sup> "that the cases in conspiracy against individuals which have gone far enough should be pushed still further. I should be sorry to have it doubted whether persons agreeing to go and sport upon another's grounds, in other words, to commit a civil trespass would be thereby in peril of an indictment for an offence which would subject them to infamous punishment." And in a very late case<sup>c</sup> Lord *Denman*, C. J., has said, "There have not been wanting occasions where learned judges have expressed regret

that a charge so little calculated to inform a defendant of the facts intended to be proved upon him, should be considered by the law as well laid. All who have watched the proceedings of courts are aware that there is a danger of injustice from calling for a defence to so vague an accusation, and judges of high authority have been desirous of restraining its generality within some reasonable bounds. The ancient form, however, has kept its place, and the expedient now employed in practice of furnishing defendants with a particular of the acts charged upon them, is probably effectual for preventing surprise and unfair advantage."

In one case a distinction was drawn by Mr. Justice *Littledale* where the money was obtained through the medium of a contract between the defendant and the party defrauded. But this decision was lately much doubted by the judges, with reference to a case reserved by the Recorder of London.<sup>d</sup> A person who falsely pretended that he was an emigration commissioner thereby induced the prosecutor to enter into a contract with him and to pay him under it a sum of money. An objection was taken, that the verbal representation could not be received in evidence, as the bargain between them was reduced to writing. But the Recorder admitted the evidence, and the judges unanimously approved of his decision, and the conviction was held good.

In the case of *Rea v. Pywell*<sup>e</sup> it was

<sup>a</sup> See the Act of Crimes and Punishments, cap. 22, p. 209, &c.

<sup>b</sup> *Rea v. Turner*, 13 East, 228.

<sup>c</sup> *Reg. v. Kenrick*, 1 Dav. & M. 215.

<sup>d</sup> Cited by Lord Denman, C. J., 1 D. & M. 218.

<sup>e</sup> 1 Stark, N. P. C. 402.

held that a sale effected by two persons of a horse warranted sound, but which was really worthless, did not render them liable to an indictment for a conspiracy; but this, said Lord *Denman*, C. J., was "not because an action might have been brought on the warranty," but because one of the two defendants, though acting in the sale, was not shown to be aware that a fraud was practised." In the case of *Regina v. Kenrick*<sup>1</sup> an indictment charging that A and B, horse dealers, being evil disposed persons, and seeking to get their living by various subtle, fraudulent, and dishonest practises, together with divers other evil disposed persons, unlawfully, fraudulently, and deceitfully did combine, conspire, &c. by divers false pretences and subtle means, to obtain to themselves from C divers sums of money or monies of C, and to cheat and defraud him thereof, was held not bad on the ground of generality. And that where A and B, in concert with each other, falsely pretended to C that a horse they had for sale had been the property of a lady deceased, and was then the property of her sister, and was not the property of any horse dealer, and that the horse was quiet to ride and drive, and by these misrepresentations induced C to purchase the horse, it was held by the Court of Queen's Bench that they were indictable for conspiracy. "We think," said Lord *Denman*, C. J., "that in this case the two ingredients of the offence of obtaining money under false pretences were proved by the evidence. The pretences were false, and the money was obtained by their means."

The definition proposed by the Criminal Law Commissioners of the crime of conspiracy is as follows: "The crime of conspiracy consists in an agreement by two persons, (not being husband and wife,) or more than two persons, to commit a crime, or fraudulently or maliciously to injure or annoy the public or any individual person." This, it will be seen, is a sufficiently large definition.

<sup>1</sup> His lordship's previous allusion to this case seems somewhat inconsistent with this. Lord *Ellenborough*, he says, "in *Res v. Pywell*, stopt the case on the trial of an indictment for a conspiracy where the fraud to be accomplished appeared to be such as would more properly be the foundation of a civil action on the warranty of a horse."

<sup>2</sup> 1 D. & M. 208.

## THE CERTIFICATE DUTY.

IN another part of this number we reprint the return which has been made to the House of Commons, with respect to the certificate duty. It will be seen that there is annually a very large sum paid by one branch of the legal profession, and that this is on the increase. Now we really do not see how the payment of this money can in any way be justified. Why are attorneys thus selected for this peculiar hardship? Why should they be forced to make this payment? Why, if they attempt to practise their profession, are they thus to be visited? Theirs is a necessary calling; in their hands are entrusted the fortunes, the characters, and the lives of their fellow-citizens. Why, if they endeavour to discharge their trust, are they to be thus mulcted? We repeat—it is a grievous injustice, and it should not be suffered to exist another year. It is only a bare act of justice to remit this tax, and we do confidently hope that it will be remitted. Every other class puts forward its claim for relief, but this tax stands by itself. It must be raised and paid, before a man can attempt to earn his bread in his lawful calling.

## NOTES ON EQUITY.

### A PAUPER, HAVING PROPERTY, AND A TRADE AND BUSINESS, DISPAUPERED.

IT may often happen that a man, after payment of all his debts, will not have 5*l.* in the world, (his wearing apparel and the subject matter of the cause not included,) and yet he shall not be permitted to sue *in forma pauperis*. That privilege is literally construed in all the courts; and it will not in general be granted where the party applying for it has property or occupation producing an income beyond the standard prescribed, however much he may be embarrassed in his circumstances, or even however much his property may be affected by the demands of his creditors. This question came to be very much considered and discussed in a late case before Vice-Chancellor *Knight Bruce*, where his Honour laid down the rule to the effect we have now stated. The case was that of *Perry v. Walker*, reported in the lately-published number of Mr. Collyer's Reports, vol. 1, p. 229, where it appeared that the plaintiff, who had been admitted to sue *in forma pauperis*, was owner of two leasehold houses for a term of which more than nine years were unexpired; and which houses were underlet by him at 79*l.* a-year, independently of a portion of the premises in his own occupation, for which he duly paid rates and taxes. It further appeared that

he was carrying on a considerable trade as a builder and carpenter; that he had workmen employed under him; that he paid two guineas a-week to a foreman; that one of his bills for work done amounted to 100*l.*; and that he had actually been received as surety to a loan society who had advanced money upon the faith of his security.

On the other hand, the plaintiff alleged, and by affidavit showed, that the purchase money of the leasehold houses was *borrowed*, and that the title deeds were pledged for repayment; that he besides owed to other creditors 300*l.*; that he was in great pecuniary distress, and sometimes in want of the necessities of life; and that if all that he had were sold, the result would be, that he would be 200*l.* in debt. So that by this species of circuitous reasoning he asserted himself to be "not worth 5*l.* in all the world," and therefore to be a fit person to be continued in the enjoyment of the privilege to plead *in forma pauperis*. The Vice-Chancellor, however, under the circumstances, and relying chiefly on the "extent of property that he has in the houses, and partly also, though not mainly, upon the manner in which he has been employing himself, and the extent to which, and the character in which, he has been earning money, I am of opinion that, consistently with the practice of this court, he is not in a situation to sue as a pauper, and therefore he must be *dispaupered*."

#### PROPERTY LAWYER.

##### VENDOR AND PURCHASER.—SPECIFIC PERFORMANCE.—SAME ESTATE. TWICE SOLD.

THE result of the case of *Cutts v. Thodey*, 1 Coll. 212, is, that where a man sells an estate first to A and then to B, the first purchaser A filing his bill for specific performance against the vendor, ought not to make B, the second purchaser, a party to the proceeding. Such was the opinion of the Vice-Chancellor of England, who decreed specific performance in favour of A, but dismissed A's bill as against B, although B had notice of A's contract. Against this decree, however, in so far as it dismissed the bill against B, an appeal was taken to the Lord Chancellor by A, who contended that as B knew of the first contract at the time when he entered into the second contract, he ought to be retained as a party on the record, so as to be bound by the decree; the plaintiff A insisting that he was entitled to have the judgment of the court upon the merits of the second contract, which he alleged was entered into by B in breach of good faith.

On the other side, *Tasker v. Small*, 3 Myl. & C. 63, and *Wood v. White*, 4 Myl. & C. 460, were cited as showing that B. was improperly made a party to the suit, and therefore that as regarded him the bill was properly dismissed. These were cases before Lord Chancellor *Cottenham*, which it was urged supported the Vice-Chancellor's decision in the present case; but the plaintiff asserted these cases to be clearly distinguishable from the present, inasmuch as

in both of them the question related to incumbrances upon a title, which the owner could at any time clear away by paying them off; whereas here the claim of B, the second purchaser, was of an adverse nature, not in the owner's power, and which fell to be governed by entirely different principles. Thus a mortgagee need not be made a party to a bill for specific performance of a contract of sale, because the mortgage may be put an end to at any time. This, therefore, was all that Lord *Cottenham* meant when he decided the cases referred to. But it was a widely different thing to say that where there was a second purchaser whose contract could not be given effect to without violating the first contract, the first purchaser had no interest, and consequently no right to retain that second purchaser on the record, especially where it was one of the points in the cause that this second purchaser had entered into his contract with notice of the first one.

The Lord Chancellor, however, overruling this reasoning, held that the Vice-Chancellor's decree was right, and that to decide otherwise would but increase litigation. The point however must still be regarded as one of difficulty; and if it be true, as stated in the report, that the Lord Chancellor rested his judgment solely on the authority of Lord *Cottenham*, the state of circumstances in the cases before Lord *Cottenham* must be carefully attended to before acting too implicitly on the decision in *Cutts v. Thodey*.

#### NOTICES OF NEW BOOKS.

*The Jurymen's Guide.* By SIR GEORGE STEPHEN. 12mo. Knight.

THIS is a useful and amusing book, and well adapted to be of service both to jurymen and lawyers.

We shall make one or two extracts; the first shall be from a chapter on what Sir George Stephen calls "the judicial mind."

"When Mathews, in his celebrated monologues some few years since, changed his costume as rapidly as his gloves, it was almost miraculous with what ease he at the same time changed voice, feature, and even sex, and with what truth and fidelity he sustained the new character which he thus assumed; but our judges effect the same metamorphosis every day, and with equal success. You may walk to Westminster Hall arm-in-arm with his Lordship, and be at a loss ten minutes after to recognise on the bench the same individual with whom you perambulated the park; at all events, the recognition will not be mutual, should you then meet his eye in the witness-box. He has substituted for the friendly courtesy of domestic acquaintance the calm frigidity of indifference; the icy stoicism of the magistrate scarcely bends to acknowledge the customary salutations of the bar. 'Brother Wilde,' and 'Brother Talfourd,' and 'Mr.



Attorney,' are severally greeted with stately tranquillity, and return the greeting with the puppet bow of Punch in a raree-show. The dignified machine performs its part with the stiff accuracy of an automaton, varied only by the occasional inclination of the head to the right or left, to catch the hints or doubts whispered by the brother automatons with which it is surrounded. Sometimes, though rarely, a Sardonic grin will slightly elevate the angles of the mouth, if some very clever witticism is perpetrated, and now and then the voice is raised, and the brow is furrowed in a stern rebuke to a too forward or too reluctant witness. Human infirmity compels a retreat for ten minutes between one and two o'clock, to snatch a sandwich and a glass of sherry in the private room, but with this exception, his lordship sits unmoved and immovable for seven hours at a stretch, passionless, nerveless, regardless as a marble statue. It was quite a relief to watch the late Lord Tenterden make an occasional parade up and down the floor of the judicial seats, like an officer on the quarter-deck of a man-of-war: it argued that the animation of humanity was only suspended, not actually extinguished by the dignity of office."

A word as to Courts of Requests, and other trading juries.

"Again, there is the *esprit de corps* of trade; a father or a guardian resists a claim for luxuries supplied to a minor; the jurymen are shopkeepers, and invariably find for the plaintiff, though their verdict is invariably set aside by the court above. In the Courts of Request, whether in London or the country, it is notorious, and almost a proverbial notoriety, that every trading plaintiff will recover, even against common sense as well as law, unless the defendant is also a tradesman. We once were present at the hearing of a case in which a jury at the Court of Request at Guildhall, gave a verdict in favour of a fruiterer, against the sworn statement of the defendant, that he had paid for his goods across the counter, although on cross examination, the fruiterer confessed that he had made a practice of charging his customers twice for the same goods, and had vindicated such knavery by the impudent falsehood, that 'no tradesman could live without doing so.' The sympathy of the shop was too strong for the consciences of the jurymen.

"There is another trading influence, similar in its character, but usually found in a much higher class of jurymen: an issue is presented to them involving some question of commercial usage; the verdict, if found in one way, will have an injurious bearing on mercantile interests, and for this reason they strain every point that can be safely strained to find it the other way: the interest of the body is allowed to override the interests of the individual before them; they must uphold the system, right or wrong, and endeavour, by their verdict, to intimidate others from again calling it in question: 'such a decision would be very unpopular on 'change; they will never hear the end of it in the money-market; Lloyds will be up in

arms;' and on such pretexts they stifle conscience, and find as best suits the convenience of the counting-house. We emphatically repeat that, in all such cases, the shop-keeping and the mercantile jurymen deliberately, and impudently, and openly invokes the curse of the Almighty."

In the Chapter on "circumstantial evidence," Sir George relates the following story:—

"At a late hour in the evening a sailor applied at a public-house on the banks of the Medway for a lodging for the night; he acknowledged he had not money to pay either for food or lodging, and both were denied him. Another sailor who was drinking in the tap-room took compassion on him, and offered him a share of his bed; the offer was gratefully accepted. At an early hour the following morning both the men were missing; the room and the bed-clothes were stained in many places with blood, and traces of the bleeding were followed through the house to the side of the river, where several footmarks were visible. The natural inference was, that murder had been committed, and that the victim had been thrown into the river. An active search was set on foot for the supposed criminal, and he was shortly apprehended. He could give no account of his companion; but, on searching his person, a pocket-knife and a foreign coin were found upon him, both of which were identified as having belonged to the missing sailor, and as having been produced by him on eating his supper the previous evening. The body could not be found, and it was assumed that it had been carried away by the rapid current of the river. The man was tried, and convicted upon this evidence; the common account goes to say that he was actually executed on Penenden Heath, but was restored, after execution, by surgical skill. As we are not in possession of any authority for this strange report, we shall rather infer that he made his escape from prison after conviction. About three years afterwards, this man was serving on board a vessel in the West Indies, when a man-of-war's boat came alongside with a gentleman, who wished to be taken as a passenger to a neighbouring island. The convicted sailor was at the helm as the passenger came up the ladder; he observed what was going on, and suddenly quitting the helm, rushed forward to the gangway, and jumped into the boat to seize one of the crew, exclaiming, 'You are the man that I murdered three years ago!' The recognition was mutual, however mysterious the explanation. It appeared, on inquiry, that the man supposed to have been murdered had left his bed before daylight, in consequence of his nose bleeding; he had gone down to the water-side to wash himself, and while thus engaged, a press-gang had carried him off to the ship in which he was then serving. Rising in the dark, he had, by mistake, put on his bed-fellow's trowsers instead of his own, and thus left behind him the knife and foreign coin. The supposed criminal lived to an advanced age, and latterly supported himself as a street-

sweeper in one of the bathing-places on the Kentish coast: his remarkable escape made him an object of much interest."

We might make many more similar extracts did out space allow it. Sir George (p. 29) makes a strange blunder, when he talks of "the recent act of Lord Abinger that removes the objection formerly made to a witness, on the ground of interest." The act was introduced by Lord Denman, to whom this little book is dedicated.

The following are the subjects of the several chapters into which the work is divided :—

"1. Serious responsibility of a juryman ; 2. The judicial mind explained; 3. Evidence; 4. Deposition of witnesses; 5. Circumstantial evidence; 6. Documentary evidence; 7. The jury-box; 8. Consideration of the verdict; 9. Damages; 10. Damages in particular cases; 11. Damages for injury to person; 12. Damages for injury to character; 13. Damages for injury to feelings; 14. Criminal proceedings; 15. Grand jury, coroner's jury, &c.

## NEW BILLS IN PARLIAMENT.

### PROTECTION OF PROPERTY IN PUBLIC INSTITUTIONS.

THIS is a bill for the protection of property contained in public museums, galleries, cabinets, libraries, and other public repositories, from malicious injuries. It recites that it is expedient to provide for the protection and security of property contained and kept in public museums, galleries, cabinets, libraries, and other public repositories; it is therefore proposed to be enacted,—

1. That from and after the passing of this act, if any person shall maliciously destroy or damage anything contained or kept in any public museum, gallery, cabinet, library, or other public repository, whether such thing be kept for the purposes of art, science, or literature, or as an object of curiosity, and whether such thing be or be not of any intrinsic value, every such person so offending shall be guilty of a misdemeanor, and, being duly convicted thereof by due course of law, shall be liable to be imprisoned, with or without hard labour, for any period not exceeding two years, and, if a male, may during the period of such imprisonment be once, twice, or thrice publicly or privately whipped, in such manner and form as the court before which such person shall be tried shall direct.

2. That the word "public" shall be deemed and construed to extend to all museums, galleries, cabinets, libraries, and other repositories to which the public are admitted, either gratuitously or for money, and also to all such as belong to any university, college, hospital, or to any body of persons incorporated or associated for the promotion of any art, science, or branch of learning or literature whatsoever.

3. That the destruction or damage of any such thing as aforesaid shall be deemed to be malicious in all cases where the act is wilful, without lawful justification or excuse.

4. That any person found committing any offence against this act may be immediately apprehended without a warrant by any other person, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

5. That nothing herein contained shall be deemed or construed to take away the right of any owner or trustee of such property so destroyed or damaged to recover by action at law compensation or damages for the injury so committed by any person against his property.

### LAW OF BASTARDY.

This bill recites that divers questions have been raised as to the validity of certain orders in bastardy made by justices under the 7 & 8 Vict. c. 101, which questions are wholly beside the merits of the cases; and it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future: it is therefore proposed to be enacted—

1. That where any proceedings have been had or taken before the passing of this act, or shall hereafter be had or taken in matters of bastardy under the provisions of the said recited act, and shall have been set forth according to the forms in the schedule hereunto annexed, or to the like tenor or effect, the same shall be taken respectively to have been and to be valid and sufficient in law; provided that nothing herein contained shall prevent any court of general quarter sessions from proceeding to hear and determine the merits of any case brought before them on appeal against any such order, or apply to any order made or professed to have been made under the said act, which shall have been quashed on appeal to any general quarter session of the peace, or in respect whereof any writ of certiorari shall have been sued out of the Court of Queen's Bench, and served before the twenty-sixth day of February last.

2. That when any order made under the provision of the said act prior to the passing of this act shall have been or shall be quashed for any defect therein, and not upon the merits, it shall be lawful for the mother of the bastard child in whose favour such order shall have been made to take proceedings for the obtaining of another order, according to the provisions of the said act, at any time within the space of six calendar months after the passing of this act, although the period limited for her application to the justice under the said act shall have expired.

3. Reciting that power is given by the said act to the putative father to appeal against an order made upon him by the justices in petty session assembled, giving notice of appeal as therein specified, and also sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace; be it enacted, that the condition of any such recognizance shall be for the ap-

pearance of the said putative father at such general quarter session of the peace as is required by the said act, and his trial of the appeal thereat, and the payment of such costs as he shall be then and there ordered to pay; and that in respect of any order to be made after the passing of this act the party entering into any such recognizance shall forthwith give or send a notice in writing of his having so entered into such recognizance to the woman in whose favour the said order shall have been made, and unless he shall enter into the recognizance before one of the justices who shall have made the order, to one at least of such justices; and in default of his giving or sending such notice or notices as aforesaid the appeal shall not be allowed; provided that the sending of such notice or notices by the post shall be taken to be sufficient.

4. That if at any time before the hearing of the appeal the putative father who shall have entered into any such recognizance shall give notice in writing of his abandonment of the appeal, to the mother of the child in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order, and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated, nor in any manner put in force or otherwise proceeded with.

5. And reciting that by the said recited act it is enacted, that where any woman shall apply to the justices at a petty session for an order upon the person whom she shall allege to be the father of her bastard child, such justices shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the said mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may make such order as is therein set forth: and reciting that power is thereby given to the putative father to appeal to the general quarter sessions of the peace against such order, but it is not therein set forth what evidence the said general quarter sessions shall or may hear on the trial of such appeal, and doubts have been raised as to whether the said mother can be heard by the said court of quarter sessions; be it therefore enacted, that on the trial of any such appeal before any court of quarter sessions the justices therein assembled, or the recorder, (as the case may be,) shall hear the evidence of the said mother, and such other evidence as she may produce, and any evidence tendered on behalf of the appellant, and proceed to hear and determine the said appeal in other respects according to law, but shall not confirm the order so appealed against unless the evidence of the said mother shall have been corroborated in some material particular by other testimony,

to the satisfaction of the said justices in quarter session assembled, or the said recorder.

The following clause entitles parties to be heard at the petty sessions by counsel or attorney.\*

6. That it shall be lawful for any woman who shall apply to the justices at any petty session for any such order as aforesaid to be assisted in her application by counsel or attorney, and for any person summoned under the said act to appear at any such petty session as the alleged putative father to appear and make his answer thereto by counsel or attorney; and it shall be lawful for either of such parties to have all witnesses examined and cross-examined by such counsel or attorney.

7. That any one magistrate of the police courts of the metropolis, sitting at a police court within the metropolitan police district, has and shall have full power to issue summonses for the appearance of parties and witnesses before such police court, and to do alone any other thing in any matter of bastardy arising under the said act, within those parts of the said district for which a police court has been or shall be established, which may be done by any justices at a petty session holden for their several petty sessional divisions in any such matter arising within their divisions respectively, and that the sitting of such magistrate at such police court shall be within all the provisions of the said act and of this act concerning a petty session of justices.

## PROVINCIAL LAW LECTURES.\*

THE example which has been set in London, of delivering lectures for the instruction of articulated clerks and other law students, is about to be followed in some of the large towns in the country. A course of lectures was some time ago delivered at Liverpool, and we find that another has been recently established at Manchester.

This course was commenced on the 2nd of January by Mr. Joseph Grave, solicitor, a member of the Manchester Law Association. The subject selected was that of Mortmain and Charitable Uses.

The lecturer, in the introductory part of his discourse, adverted to the advantage to be derived from oral instruction communicated by persons of professional experience, and expressed his anxiety for the improvement of those who were thereafter to fill the places of the present members of the profession. He observed that—

“The vast interests which are confided to attorneys and solicitors, require that they should

\* See 6 & 7 W. 4, c. 114.

be men, not only of bright honour, but of great learning and diligence,—not only of transparent characters for honesty and integrity, but of deep legal and general mental acquirements. Such, I trust, you will all become; and I hope that the day is not distant, if it has not already arrived, when, even in the mouth of a vulgar jester, the name of an attorney will no longer be synonymous with all that is contemptible for trickery and chicanery: but he will hold that rank in the estimation of the public, which one of a learned profession, having interests of vast magnitude committed to him, ought to possess; and which, I am happy to believe, is occupied by very many whom you, I hope, will follow and imitate.

“I know no one who has more in his power for good or evil, than a solicitor in full practice. The property, the secrets, and the peace of families, are much in his power; and it is of the first importance that he should so conduct himself, in his professional and general life, as to become worthy of the friendship of those who employ him; and such an one can hardly fail, sooner or later, to obtain a fair reward for his professional labour. The legislation, with regard to attorneys and solicitors, has certainly hitherto appeared too much based upon the presumption that they are a class against which the interests of the public have to be guarded; but the gentleman who is determined to act uprightly, will as little care for such acts of parliament, as does the honest and honourable man for the statutes against larceny, embezzlement, and other felony, so far as he is personally concerned. I am happy to be able to say that I know not a few men, members of the Manchester Law Association, to whom I would be willing to leave it to determine how, in any case, I ought to act as a man of honour and a gentleman, and submit to do according to their award, with the fullest assurance that the course which they would direct, would be one that would ensure the approbation of all men whose good opinion is worth having. They are men deserving of the highest honour for integrity and learning; and such, I trust, all the articulated clerks, whom I have the pleasure of meeting how, will hereafter become. Be it your aim and your resolve to be men of high moral character, of gentlemanly conduct, and of intellectual ability.

Mr. Grave then recommended the formation of a society for the discussion of Questions at Law. He said—

“I well remember the great advantage which I derived from a diligent attendance at the meetings of such a society. The preparation for a debate led to a diligent examination of cases which would otherwise have been unperused, until a necessity for referring to them had arisen in practice, and I should thereby have lacked a preparedness for practice which I trust I possessed. It is by diligent study alone that you can acquire a competent knowledge of the law: there is no royal road to it. You are aware that in most cases the gentlemen to whom you

are articulated have not time, and that even where they have time it is not usual for them to take any other way of instructing you in your profession than giving you full opportunities of observing and assisting in all the business which is transacted in their respective offices. So also will it be if, on the expiration of your clerkship, you go into the chambers of a conveyancer or special pleader. In a conveyancer's chambers you will be told to read the twentieth chapter of the second volume of Blackstone's Commentaries; Sugden's Introduction to Gilbert on Uses; Sanders on Uses and Trusts; Fearn on Contingent Remainders and Executory Devises; Sugden on Vendors and Purchasers; and the Modern Statutes; and then, having assisted in the drawing of deeds, and having copied abundance of precedents, you will be dismissed to apply your learning to practice. So far as I have heard, it appears that the oral instruction imparted in chambers has become ‘small by degrees, and beautifully less.’ It will rest with you to make yourselves acquainted with the law; and it is a matter of regret, which has no doubt occurred to many of you, that there are few elementary law books. You will find that when you enter upon the study of any branch of it, you will have to plunge at once into the utmost depths of it. I shall be very happy if the system of lecturing, now adopted by the Manchester Law Association, assists you in your studies, and helps you to the attainment of a high degree of legal learning.

“It has long been the practice in other professions to give to the students oral instruction; and I can see no reason why it should be omitted in the profession which you have chosen. You have embarked on a study than which none higher or more important can be pointed out.

“‘The study of the law,’ said the late Dr. Arnold, the distinguished head master of Rugby, ‘is glorious; more transcendent than any other earthly thing.’”

Mr. Grave then entered on the legal subject he had announced, and went through the several statutes and authorities with much ability and learning.

## DEFECTS OF THE LATE BANKRUPTCY ACT.

THE relief afforded under the 7 & 8 Vict. c. 96, s. 6, to prisoners in execution, is confined to those who are not traders, or being traders, owe less than 300*l*. The papers in a case which exemplifies the imperfection of this statute have been sent us, from which we make the following abridgment:—

The facts as deposed to were these: About the 15th day of April last a fiat in bankruptcy was issued against the insolvent, then a prisoner in the Queen's Prison, and he was thereupon declared bankrupt on the same day.

On the 26th of the same month the choice of assignees took place. The 26th of May was the day appointed for the bankrupt to pass his last examination, but it appearing to the commissioner that his balance-sheet had not been filed in due time, his examination was adjourned until the 15th of June. On account of the very unsatisfactory statement of accounts in the balance-sheet of the bankrupt, it was considered by the assignees to be their duty fully to investigate the same; and, accordingly, at the adjourned examination, on the 15th day of June, the bankrupt was examined at great length by counsel; the further inquiry was adjourned until the 20th of June, in order that the charges brought by him against a certain banking company and other parties might be carefully sifted. On the 20th day of June these charges were most rigidly gone into by the learned commissioner, and after a lengthened inquiry he adjourned the examination of the bankrupt *sine die*, and he was again removed in custody to the Queen's Prison.

About the 11th of September the bankrupt applied to the Court of Bankruptcy for his discharge from custody, under the 6th sec. of cap. 96 of the act 7 & 8 Vict., and in his petition for that purpose described himself as a person *out of business*, and made no allusion whatever to his business, or the residence in which such business had been carried on, and where he had a few months previously become a bankrupt.

The commissioner having been thus misled, the insolvent obtained his *discharge from custody*, and his first examination under such petition was appointed for Monday, the 16th October.

The solicitor to the fiat attended accordingly on that day to oppose the insolvent, and the learned commissioners directed, on having the above circumstances laid before them, that the further hearing of the case should be adjourned until the 28th of October, and that in the mean time affidavits be made setting forth the facts of the case, on which the insolvent and his attorney were called upon to answer the matters therein set forth.

The question was, whether under these circumstances the bankrupt was liable to be indicted for perjury, or for wilful falsehood, subjecting him to the pains, penalties, and forfeitures of perjury, under the 40th sec. of 7 & 8 Vic. c. 96. He had imposed upon the court, and obtained his discharge. The case seems one in which the assignees might be expected to prosecute, for although the proceeding was not taken by the bankrupt under or in violation of the bankrupt laws, yet the object of it was to defeat the effect of the adjournment *sine die*, by which the bankrupt was purposely left exposed to the executions, and the assignees had less means of discovering any further property which they suspected to belong to the estate. In such cases the costs would be allowed out of the estate. (*Ex parte De Taslet*, 2 G. & J. 403; *Ex parte Joyner*, 2 Mon. & A. 1.) It might however be contended, for the bankrupt,

that when he made the affidavit he had ceased to be trader, and consequently that the affidavit was true. But inasmuch as a fiat might have been supported against him at the very time he made the affidavit, (supposing no other had then been in prosecution,) for the very debts from which he was applying to be protected, he certainly was a trader within the meaning of the statutes in force relating to bankrupts, whatever he might be in a more popular acceptance of the term, and the warning given him by the commissioner and the registrar deprived him of the excuse of not understanding the meaning of the expression. If it could be held that he had ceased to be a trader, and could with truth make the affidavit, it would follow not only that he was not guilty of perjury, but that he had done no wrong whatever in obtaining his discharge, which the legislature must then be taken to have intended to procure for persons in his situation.

These facts being submitted to the commissioner by whom the discharge was ordered, he decided against the prosecution, on the following grounds:—

That if the insolvent were indicted it would be for wilful and corrupt perjury, or what was equivalent to it. The act of parliament authorises a person not a trader to petition. The bankrupt had ceased to be so at his bankruptcy, and whether he was or was not strictly justified in swearing, after his bankruptcy, that he was not a trader, was a mere question of law, and it would be impossible to convict him of perjury for so swearing. The point to which he swore was a nice point of law, and he could not be held guilty of wilful and corrupt perjury for drawing false conclusions as to nice points of law. The mischief which happened arose from the law permitting men to get orders of discharge *ex parte*, without notice to detaining creditors; that mischief had ceased by the new rules in insolvency, and there was therefore no object in prosecuting.

## PRISONERS' COUNSEL.

THE following observations of Mr. Baron Parke, in the *Queen v. Tawell*, Buckinghamshire Spring Assizes, 1845, contrasts the old law with the new allowing prisoners the benefit of counsel, and are worthy of being recorded:—

Mr. Baron Parke observed, in summing up,—“They (the jury) were aware that the law respecting criminal trials had been recently altered. So far back as the history of the law went, and during the greater portion of his (Mr. Baron Parke's) professional career, which was not a short one, the practice had been this: the counsel for the prosecution simply stated the case, but without drawing any inferences, in order that the jury and the prisoner might be informed of the facts to be given in evidence against him, thus abstaining from any observations that could influence the mind of the jury one way or the other; the counsel for the pri-

soner was at liberty to cross-examine the witnesses, and raise objections in point of law: the result of which mode of trial was, that the minds of the jury were brought to the consideration of the case, uninfluenced by any observations not absolutely called for by its merits. It had pleased the legislature (stat. 6 & 7 W. 4, c. 114, 1836) to alter that mode of conducting proceedings in criminal cases; and he was far from objecting to the alteration, which he thought a wise one. By that alteration, counsel for the prisoner were now at liberty to address to the jury such observations as they pleased on behalf of the accused; the result of which was, to throw an additional and a difficult duty upon the judge, for it became necessary to dissipate the effects which those observations, as far as they appealed merely to the *feelings* of the jury, might have produced upon their minds."

This case of the *Queen v. Tawell*, peculiarly illustrates the new practice. It was known that the utmost efforts would be made by counsel of high reputation for an acquittal; the consequence was, the case was most carefully got up. At the trial, Mr. Serjeant Byles, for the Crown, made a strong and clear statement of the facts, with many judicious observations; and the evidence was very full. Mr. Kelly, Q. C., did all that a zealous, ingenious, and eloquent advocate could do in such case, and made a strong appeal to the jury. Mr. Baron Parke felt the force of this appeal, and thought it his duty to make many observations on the defence, and put the case on its real merits. The judge was not counsel for the prisoner. The result was, the prisoner was found guilty. The trial had none of the quiet and decorous proceedings of the olden time.

Upon the merits of the old and new practice, it appears that there are as many prisoners as ever found guilty,—some are saved by an ingenious and able defence. The case is, by the new plan, more sifted and entered into; but one of the evils of the day, of great importance, is the prolonging of trials to a greater length of time than they used or ought to be, by which much of the time of witnesses, jurymen, not to say judges, is taken up, which might be spared under a better system.

## EVILS OF FREQUENT CHANGES IN THE LAW.

*To the Editor of the Legal Observer.*

SIR,—It was one of the maxims of the olden time, that "it was a miserable servitude where the law was wavering;" but when or under what circumstances this maxim attained its dignity as one of the foundations of our legal system, savours too much of antiquarian research to be strictly applicable to your columns. If, however, these could be clearly distinguished, the knowledge might tend to reconcile things as they are to some who are now labouring under the impression that, anterior to the last fifteen years, historical retrospect furnishes no

parallel to the changes which, during the more modern period, have been unceasingly making in the law—in very many instances degrading it as a science—furnishing employment to the versatile or busy intellect of those who apparently delight in thrusting themselves forward in a fancied obedience to the necessity of the times, and rendering that which was accounted the noblest of all sciences a wearisome load of impotent legislation, a thing of shreds and patches, and a collection of arbitrary regulations, oftimes as frivolous as they are inconsistent and absurd.

The history of the law during the last fifteen years, with a cursory glance at its present condition, may be appealed to as a warrant for the preceding observations—an apparently wilful disregard of legal and constitutional principles, with as marked an adherence to those of a peculiar cast of politics being visible in many, if not most of the changeling amendments we have been doomed to witness—and what is more to be regretted, a reckless shortsightedness—a serpent-like simplicity and a callous selfishness have been so far induced by this rage for innovation, that the poor human nature of some of our distinguished men, the bell-wethers of their flock, is rarely found exerting itself on the side of true patriotism, exalted benevolence, or the genuine love of country.

The whirlpool of change through which we have passed during the last fifteen years, coupled with a glance at that now opening before us, affords such fearful evidences of the truth of Lord Bacon's philosophical aphorism, "It is a perpetual law that no human law is perpetual," as would, we doubt not, terrify the great philosopher, could he now be recalled to witness them; so much so, that if we could imagine his intellect dwarfed down to that of his successors now upon the earth, we might perhaps find his notion of the fitness of things so comparatively low as to induce him to join in hallooing on the cry, that a respite from the excitement of bustling reckless change ought to be unknown. And yet, forsooth, we read of a resistance to the gradual improvement of the law, couched in terms which, despite of their alluring tendency, approximates closely to a libel upon the dead, as well as upon the confiding simplicity of the public mind, and particularly of that portion of it to which I have the honour professionally to belong.

In this progressing state of things—this undeniable proof that the spirit of the times is indeed changed, it may perhaps be wise to consider how far a necessity is imposed upon us to defend the few legal landmarks which are still left us, by occasionally stepping over the legal boundary line within which this work has hitherto confined its practical and useful labours. If the rights of property have sustained a shock by the impetus of the movements which have taken place in England during the last twenty years, it is equally true that the principles of that department of science by which they were hitherto guarded and

preserved, have been more than proportionably affected; and it apparently borders upon the ridiculous, and as tending to deceive, to find some of the very men who wrought the confusion in which we are involved, now hinting at "the necessity of moderation," discoursing about "the dangers of unreflecting haste and extravagant attempts in the great work of law improvement."

The late Lord Eldon was an insuperable barrier to the scheme of triumphing in politics, by trampling upon or changing the law, which since his withdrawal from public life and the world has been so successfully acted upon—he clearly saw the end from the beginning, and lived long enough to witness its commencement. Forsaken by his private friends, and abandoned by his political connexions, whose battles he had fought, and whose interests, as well as those of his country, he had protected, amidst the ingratitude of all, he stood to the last like a stately oak, unmoved and unshaken by the devastation which had commenced, and was then howling around him—and which has continued its blast with tenfold fury since his retirement.

Few men lived who have been more malignedly pursued, and the scent is now breast high, than has been Lord Eldon; but happily those in whose memory he still lives may boldly face his pursuers, they themselves being judges, and say—few men discharged the duties of his high office with more wisdom and impartiality—there are none whose decisions are held in higher estimation—the exasperations of his temper never warped the amiable qualities of his heart—an overbearing disposition was not visible during his long reign in the Chancery Court. Like Sir Matthew Hale, it may be said of him, "nothing was more admirable than his patience—that he would bear with the meanest, and give every man his full scope, thinking it much better to lose time than patience." Lord Eldon was not an ignorant or a negligent judge; and though accused of tardiness, it did not arise from the want of, but from the ripeness of his knowledge of the law, and the conviction that it was not conducive for the public welfare that suits should be as carelessly decided on as if the result had been tossed for. Over carefulness, it may be admitted, was his greatest failing. He is now a dead lion, at which every living animal may safely kick.

X. Y. Z.

## PARLIAMENTARY RETURNS.

### ATTORNEYS' CERTIFICATES.

A Return of the number of Certificates annually taken out by attorneys and solicitors practising in England and Wales, from the first day of Easter Term 1833 to the present time; and the gross annual amount of stamp duties paid during those periods upon such certificates.

(—In continuation of Parliamentary Paper, No. 329, of Session 1833.)—

YEAR.	NO.	DUTIES.
Easter Term 1833 to Easter T. 1834	9,450	81,188
Easter Term 1834 to Easter T. 1835	9,480	81,650
Easter Term 1835 to Easter T. 1836	9,713	83,554
Easter Term 1836 to Easter T. 1837	9,719	84,030
Easter Term 1837 to Easter T. 1838	9,735	84,248
Easter Term 1838 to Easter T. 1839	9,873	85,586
Easter Term 1839 to Easter T. 1840	9,909	86,224
Easter Term 1840 to Easter T. 1841	10,033	86,994
Easter Term 1841 to Easter T. 1842	10,073	87,834
Easter Term 1842 to Easter T. 1843	9,998	87,352
Easter Term 1843 to Easter T. 1844	10,184	89,376
Easter Term 1844 to 8th March 1845	10,120	89,222

TEESDALE COCKELL.

Stamps and Taxes, }  
10 March, 1845. }

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

#### VOLUNTARY SETTLEMENT.—POLICY OF INSURANCE.—MORTGAGE DEBT.

*The court will not give effect to a voluntary assignment to a trustee of a sum due upon mortgage, or of a sum due upon a policy of insurance, where no notice was given to the office, though the deed of assignment be duly executed and delivered up to the trustee.*

THIS was a bill brought to have the trusts of a voluntary settlement carried into effect. The deed of settlement was executed by a Mr. Whitlock, in 1826; and the property purporting to be comprised in it consisted of all his household goods, and all sums of money due or to become due to him, with all policies and other securities for the same, and all his personal estate and effects, with the several mortgages and all other securities relating thereto. The deed was delivered up to Mr. J. Ward the trustee. The trusts were in favour of the nieces, and only near relation of the settlor. Subsequently Mr. Whitlock made a will, by which he disposed of his personality in a different manner, among the same parties. At his death he was entitled to 1,000*l.* on a policy of insurance to a sum due on mortgage; and to 300*l.* 3 per cents. consols. These last had been purchased after the execution of the deed: that the policy and the mortgage were both in existence at the time of its execution.

Mr. Whitlock died in 1836. Shortly after his decease a bill was filed by Mr. Ward, and some of the *cestui que trusts* under the deed, against the executors under the will, and the other *cestui que trusts* to obtain possession of the property, and have it administered accord-

ing to the trusts of the deed. The cause was heard before the *Vice-Chancellor of England*, and is reported in 8 Sim. 571. His Honour dismissed the bill, with the remark that "what the plaintiffs got by their deed they might maintain by their deed." The plaintiffs appealed to Lord Cottenham, who affirmed the decision, upon the ground that as a bill by the trustee, no aid appeared to be wanting from the court since he might bring his action at law; while as a bill of the *cestui que trusts* it was equally defective; for there the trustee would be the principal defendant. His Lordship however intimated, that "had the bill been one by which the trustee called upon the court by reason of the difficulty arising from the nature of the trust, and the conflicting claims of the *cestui que trusts* and executors to lend him his aid and protection," asking the *cestui que trusts* defendants instead of plaintiffs, the court might have directed inquiries before the Master, for the purpose of ascertaining what debts the property claimed was subject to, "which would have eventually enabled it to have given suitable relief." His Lordship therefore dismissed the bill, without prejudice to the institution of any other suit. C. P. Cooper's Rep. 146; 8 Sim. 576. In consequence, the present bill was filed by the trustee against the *cestui que trusts* asking for relief, upon the ground mentioned by Lord Cottenham. At the hearing, objection was, nevertheless, taken to the frame of the suit; but the M. R., considering that it was framed in the manner suggested by the Lord Chancellor, directed an inquiry as to the property of which Mr. Whitelock died deceased, and as to his debts. The Master reported that all these debts had been paid, and that there was a considerable residue. The cause now came on for further directions. It must be observed, that all claim to the 300*l.* consols was abandoned in the present suit.

The argument turned upon two questions—1st. It was urged that a trustee could not file a bill against some of his *cestui que trusts*, who claimed rights inconsistent with the trusts, and it was alleged that Lord Cottenham did not intend to affirm any such proposition, but referred only to cases where a bill might be brought for the purpose of having difficulties in the way of the execution of a trust removed, for the benefit of all the *cestui que trusts*. On this point *Talbot's Radnor*, 3 M. & K. 252, was cited. The 2nd question depended upon the admitted doctrine, that a court of equity will not enforce a claim by a volunteer, except he can show a good title, either at law or in equity. Upon this subject the learned counsel, who argued in support of the bill, took different lines.

Mr. Cooper and Mr. Rolt for the trustee, contended that the deed gave a good legal title to the mortgage money, because the trustee might sue as assignee in the name of the assignor; and the courts of law would restrain the latter from releasing the action. *Winch v. Keeley*, 1 T. R. 619; *Mawley v. Frear*, 6 Bing. 547; *Legh v. Legh*, 1 Bos. & Pul. 447; to the

sums secured by the policy of insurance on the same grounds, and that although no notice had been given to the insurance; for notice was immaterial as between volunteers; *Jones v. Gibbons*, 9 Ves. 411; *Fortescue v. Barnet*, 3 M. & K. 36; and to the household furniture, though it had remained in the possession of the settlor, because this was consistent with the terms of the deed. *Codogan v. Kennett*, 2 Cowper, 432; *Edwards v. Harren*, 2 T. R. 587; *Dewey v. Bayntun*, 6 East, 257; *Reed v. Wilmott*, 5 Moo. & Payne, 533. To show that a will subsequent to a voluntary deed would not affect it, they cited *Villiers v. Beaumont*, 1 Vern. 100; and *Boughton v. Boughton*, 1 Atk. 625. They suggested also, that the deed might be sustained as a covenant to stand seized to uses. If, however, it was held not to have the effect attributed to it, still they urged they were entitled to relief under the covenant for further assurance, which the court, to prevent circuitry, would at once give them against the assets. *Williamson v. Codrington*, 1 Ves. 511; *Watson v. Parker*, 6 Bea. 293; *Dillon v. Coppin*, 4 M. & C. 647.

Mr. Tinney and Mr. Taylor, for the parties beneficially interested in supporting the deed, admitted that the mortgage money and the sum due on the policy did not pass at law by the deed; but they contended that the assignment created a good equitable claim to the mortgage money. *Meek v. Kettlewell*, 1 Hare, 464; 1 Phil. 342, and relied upon their right under the covenant for further assurance, *Vernon v. Vernon*, 2 P. W. 594; *Stephens v. Trueman*, 1 Ves. 73; *Beard v. Nuttall*, 1 Vern. 427; *Osgood v. Strode*, 2 P. W. 245; and on the effect of the deed as a covenant to stand seized to uses, *Sand. on Uses*, I. 98, 5th Ed.; and to show that notice was not necessary in respect of the policy, cited *Fletcher v. Fletcher*, 8 Jur. 1840.

Mr. Turner and Mr. Dickenson, for the parties claiming beneficially under the will, contended that deed was inoperative at law, so far as related to the money due on the mortgage and the policy, because it was an assignment of a chose in action; which not being for value, the assignor, in whose name alone an action could be brought, could not be prevented from releasing; and that, in respect to the policy, the transaction was not complete without notice. *Dillon v. Coppin*, 4 M. & C. 647; *Jefferys v. Jefferys*, 8 Cr. & Phil. 138; *Edwards v. Jones*, 1 M. & C. 226; *James v. Bydder*, 4 Bea. 600; *Beatson v. Beatson*, 12 Sim. 281; *Collinson v. Patneh*, 2 Keen 123. The cases upon covenants, they distinguished from the present, because the only remedy at law here would be damages, of which the amount was uncertain; and urged that unless a voluntary deed were perfected at law, or there was an express declaration of trust, courts of equity would not enforce it. *Meek v. Kettlewell*, 4 s.

Mr. Kindersley and Mr. Blundell, for the executors.

Lord Langdale, after stating the facts of the case as given above, observed, that it did not



appear to him to have been Lord Cottenham's intention to express any opinion as to the merits of the case, or the question whether the assignment was one to which a court of equity would give effect, and therefore that question remained open for him to decide. Now he thought that the donor did not intend to create trust to be executed by himself, but intended it to take effect out of the assignment. Therefore the question arose, what was the legal operation of the assignment? because if it was good at law, there was no need to come here; and if it was imperfect, and therefore bad, the court would not give effect to it. Now there was no doubt that the sum due on the mortgage debt did not pass by the deed at law, for they were choses in action. *Edwards v. Jones*, 1 M. & C. 226. While, notwithstanding the case of *Fortescue v. Barnett*, 1 M. & K. 36, he considered that notice was necessary to complete the assignment of the policy of insurance; and certainly, whether that case could be supported upon any ground or not, Sir John Leach did not intend, in deciding it, to alter the law. It seemed, therefore, to him that under the circumstances there was no valid assignment either of the mortgage debt or of the policy; but at all events, if there was, the trustees might enforce it at law. The bill therefore must be dismissed, but without costs.

*Ward v. Audland*, January 17, 18, 19, & 20, and February 27, 1845.

#### Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister at Law.]

#### HUSBAND AND WIFE — DEED OF SEPARATION.

*A deed of separation may be supported, although it do not contain a covenant on the part of a trustee to indemnify the husband against the wife's debts, provided it be shown that there was other bonâ fide consideration upon which it was founded. The court, however, in carrying the agreement for separation into effect, will direct the insertion of the covenant, if the wife insists that it was omitted by mistake and offers to have it inserted.*

THIS suit was instituted by the plaintiff, who was the wife of the defendant, for the specific performance of certain articles of agreement for a separation, executed in the year 1843. The plaintiff on her marriage with the defendant, which took place in 1839, was entitled to estates of the value of about 9,000*l.* per ann., besides considerable personal property, and by the settlement executed previously to the marriage, a portion of the estates amounting in value to between 3 and 4,000*l.* per annum was settled on the plaintiff, and the remainder declared to belong to the defendant in his marital right. Soon after the marriage serious differences arose between the parties, and in 1843 the plaintiff instituted a suit in the Ecclesiastical Court to

annul the marriage, on the ground of impotency on the part of the defendant. This was followed by a negotiation between the parties, and it was ultimately agreed that articles of separation should be executed, by which the defendant agreed to give up all his interest under the marriage settlement, in consideration of an annuity of 1,000*l.* per annum, and it was agreed that all proceedings in the suit for a nullity of the marriage should be discontinued. Articles of agreement for a separation were accordingly drawn up and executed; but it being discovered that the covenant for indemnity on the part of the trustee was expressed to be given for indemnifying the defendant against his own instead of his wife's debts, the defendant contended that the articles were invalid, and refused to perform them, whereupon the plaintiff instituted the present suit. The defendant also filed a cross bill, by which he sought to have the articles delivered up to be cancelled, upon the ground that his signature to them had been obtained by fraud and intimidation, and while he was labouring under great nervous excitement from a dread of the ridicule and degradation that would be produced by the charge contained in the suit in the Ecclesiastical Court, and which charge he alleged to be totally false. The plaintiff, on the other hand, solemnly swore in her answer to the cross bill, that the marriage had never been consummated, by reason of the truth of such charge. The cause occupied several days in argument, and after taking time to consider,

The Vice-Chancellor this morning delivered judgment. His Honour, after shortly stating the facts of the case, said, the question was whether there was power in the court specifically to perform these articles of separation. In consequence of the able discussion that had taken place at the bar on the several occasions when this matter was before the court, he had reviewed all the cases bearing upon it, and he thought it would be the most idle pedantry to affect to have a doubt upon the question; for whatever difficulty courts of equity might formerly have entertained in specifically performing articles for a separation between husband and wife, the matter was now concluded by authority. His Honour then referred to the several authorities which supported this proposition, tracing the progress of the doctrine from the earliest decisions of the Master of the Rolls in 1700, reported in 2 Vern., to the last decision of the House of Lords in *Jones v. Waiit*, 9 Clarke & Fin. 188, and thus showing that it had received the successive support of Lords Cowper, Hardwicke, Alvanley, Rosslyn, Redesdale and Eldon, Sir Wm. Grant, Sir John Leach, and Lord Langdale. The principal cases upon the subject were, *Seeling v. Crawley*, 2 Bro. C. C. 386; *Angier v. Angier*, Prec. Chanc. 496; *Fitzer v. Fitzer*, 2 Atk. 511; *Fletcher v. Fletcher*, 2 Cox, 99; *Moore v. Freeman*, Bunb. 205; *Ledgard v. Johnson*, 3 Ves. 352; *Bateman v. Ross*, 1 Dow. 235; *St. John v. St. John*, 11 Ves. 526, and 3 Mer. 266; *Moore v. Ellis*, Bunb.; *Worrall v. Jacob*,

3 Mer. 256; *Ross v. Willoughby*, 10 Price, 2; *Bloorthing v. Bird*, 2 Sim. & Stu. 372; *Westmeath v. Westmeath*, Jac. 126; *Wellesley v. Wellesley*, 10 Sim. 256, and 4 Myl. & Cr. 564; *Frampton v. Frampton*, 4 Beav. 287; *Jones v. Waitt*, 9 Clarke, & Fin. 186; *Hyde v. Price*, 4 Ves. 437; *Cook v. Wiggins* 10 Ves. 191; *Clough v. Lambert*, 10 Sim. 174. His Honour said, he had also consulted the works of conveyancers, and although in *Bridgman's Precedents*, which were published in 1669, and in *Lilley's*, which were published in 1719, there were not any precedents for articles of separation, yet he found one in *Horseman*, which was published in 1744, and several in *Wood's Precedents*, which were published in 1770. Entertaining, then, no doubt that articles of separation between husband and wife could be supported, he proceeded to the general question, which had been urged with so much spirit and force by Sir *William Follett*, that such articles were against public policy. In this case he remained of the opinion which he had always entertained, that the articles could not be said to be against public policy, because they put an end to the suit in the Ecclesiastical Court, which would have the effect of dissolving the contract made *in facie ecclesie*, which was all in affirmance of what the parties had solemnly and advisedly done. If, too, the public had an interest in the matter, why had not the Attorney-General been made a party to the suit? Surely it must have been because the public felt they had nothing to do with the quarrel, which was merely a private one between man and wife.

His Honour then referred to the answer of the defendant to the original suit, and of the plaintiff, (Mrs. Wilson), to the cross suit, and the evidence adduced on the part of the defendant, and stated his reasons for giving greater weight to the oath of Mrs. Wilson, notwithstanding such evidence, than to the oath of the defendant. His Honour also adverted to the conduct of the parties during the treaty for a separation, and stated that every act showed that so far from Mr. Wilson being disturbed by any apprehension, he was of a most calculating mind—that he entered into the negotiation about the lady's fortune in a most arithmetical manner; and that no one could look at his minute corrections of the draught articles, without seeing that he had the most perfect possession of his mind, and that more vigilance could not have been exercised in his behalf, if he had employed a solicitor. There was nothing, therefore, in this part of the case to show that the articles should not be specifically performed. Then it was said, there had been no consideration for the agreement; but even supposing it was intended, as had been argued, that the indemnity should be against the defendant's own debts, it was still part of the agreement that the suit in the Ecclesiastical Court should be stopped, and, moreover, the trustees were bound to pay him the annuity stipulated to be paid out of the Essex and Yorkshire estates. So far, therefore, as con-

sideration went, his Honour said, he was clearly of opinion the articles could be supported. There was the singular fact of the omission of the usual covenant on the part of the trustees to indemnify the defendant against the plaintiff's debts, but that was evidently an error, for in the articles the trustees covenanted to indemnify the defendant against his own debts. The defendant said there were no such debts; but at all events that covenant was a consideration, for, *prima facie*, as against him there must be taken to be debts due. It was most remarkable that this clerical error, as it was termed, had not been detected by one of the many persons who examined the articles: if, however, there was a clerical error between the conveyancer and his clerk who copied his instructions, there was no error as between the plaintiff and defendant with reference to the whole case, and if, therefore, the plaintiff wished to have the articles specifically performed as they stood, his Honour said, he was of opinion a case had been made out of performance, and that upon the law and facts of the case taken together, the plaintiff was entitled to the relief she asked, with the exception that she must take the articles as she found them executed, and on executing them, as she offered to give an indemnity by her trustees against her future debts, that in the articles to be executed there should be such a covenant inserted. The relief being given on the original bill, and the cross bill asking to have the articles cancelled, on the ground of fraud and intimidation, which was not proved, the latter must be dismissed with costs, and the costs of the plaintiff on the original bill given up to the hearing. A reference must, therefore, be ordered to the Master, to settle a deed according to the articles, in which must be inserted an indemnity to the husband by the wife's trustees, against her present and future debts.

*Wilson v. Wilson*. Feb. 11, 1845.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### PRACTICE OF THE COURT. — RESEALING RECORDS.

*By a rule of court, the records in cases which stand over from one sitting to another must be regularly resealed previous to the sitting to which they stand over, or in default thereof the causes will not be heard. Where a cause appeared in the list for the third sittings after term, as an undefended cause, and on the day appointed counsel appeared for the defendant and requested that the cause might be postponed, as he intended to call witnesses; and on the day appointed at the sittings after term the cause was not taken, but it was taken on one of the following days, and a verdict passed for the plaintiff: the court in this term made a rule absolute to set aside that verdict for irregularity, on the*

ground that the record had not been resealed.

Mr. Keane moved for a rule to show cause why the verdict which had been taken in this case should not be set aside for irregularity. The defendant had received notice that the case would be taken as an undefended cause at the third sittings in Michaelmas Term last. The defendant's counsel appeared on that day, and stated to the court that the cause was defended, and it was then postponed till the sittings after term. On the day appointed the cause was again called on, but not taken then, it was taken on one of the following days. The alleged irregularity was, that the record had not been resealed for the sittings after term.

By a rule of this court, Easter, 7 Geo. 1, 1721, "It is ordered, that all records of *nisi prius* in London and Middlesex be sealed on or before the respective days appointed by the Lord Chief Justice in the sittings paper for their trial." By a rule of court, Easter, 33 Geo. 3, 1793, "It is ordered, that the writ of *distingas*, and the records in cases which stand over from one sitting to another, be regularly resealed previous to the sitting to which they stand over, or in default thereof the causes be not heard." By a rule of Hilary Term, 4 W. 4, it is ordered, "It shall not be necessary to repass any *nisi prius* record which shall have been once passed, and upon which the fees of passing shall have been paid; and if it shall be necessary to amend the day of the teste, and return of the *distingas* or *habeas corpora*, or of the clause of *nisi prius*, the same may be done by the order of a judge obtained on an *ex parte* application."

Mr. Pashley showed cause.

Looking at the rules of court that have been cited, there are no grounds to complain of irregularity. Issue was joined in November, and the cause stood as an undefended cause for the sittings during Michaelmas Term, when it was postponed at the request of the counsel for the defendant, who stated he had witnesses to call. The cause kept its place in the paper, and was never struck out; the jury process was resealed; the record had been repassed for the sittings after term; there is therefore no irregularity on the part of the plaintiff. [Cole-ridge, J.—The practice is, to reseat the record before the sittings at which the cause is to be tried.] It has never been held that the sitting was considered as one day; there is no intendment of that sort. He cited *Wells v. Day*.<sup>a</sup>

Mr. Keane, in support of the rule.

It is immaterial that the learned judge should direct that the cause should keep its place in the list. The record not being resealed, the learned judge had not the power to try, and therefore he had not the power to make any order. The proceedings are irregular; the rules of this court require the record to be resealed in cases which stand over from one

sitting to another, which has not been done in the present instance. (Stopped by the court.)

*Per curiam*.—Rule absolute, without costs.

*King v. Tress*.

### Queen's Bench Practice Court.

[Reported by R. H. WOOLRYCH, Esq., Barrister at Law.]

#### WRIT OF TRIAL.—ORDER FOR.—ISSUE.

*Where a cause is to be tried before the sheriff on a writ of trial, semble that the proper course is to draw up the order for the writ of trial before the issue is delivered.*

*Semble that it is an irregularity to deliver the issue with blanks for the teste and return of the writ of trial.*

Horn had obtained a rule *nisi* to set aside the issue and notice of trial in this cause, or to amend the same at the cost of the plaintiff, on the ground that the *teste* and date of the return of the writ of trial, which had not been issued till the 22nd November, were omitted in the issue, the blanks in the form prescribed by the R. Gen. H. T. 4 W. 4, not having been filled up; and also on the ground that the jury were to be summoned to try "the issue" instead of "the issues" joined between the parties, there being two issues joined.

Bovill showed cause.—This is no irregularity. The issue is generally delivered in blank. The writ of trial is usually obtained after the delivery of the issue, and the plaintiff cannot know the date by anticipation. The meaning of R. Gen. H. T. 4 W. 4, which prescribes the form of the issue with blanks for the dates, is, that the dates are to be inserted as soon as the writ has issued. It does not necessarily follow because an issue has been delivered that a writ of trial will be obtained. There can be no writ till after issue joined. The object of the issue is merely to inform the defendant of the mode in which it will be entered on the roll. Secondly, assuming this to be an irregularity, the application should have been to a judge at chambers. *Ikin v. Plevin*, 5 D. P. C. 594. The notice of trial is at all events good.

Horn, contra.—The writ of trial ought to be obtained before the issue is delivered. [Patterson, J.—How can the plaintiff know, when he delivers the issue, what time the judge will fix for the issuing of the writ? No doubt a difficulty arises upon the form given by the rule.] That difficulty would not be presented if the order and writ were obtained before the delivery of the issue. An application to the court is the proper mode of rectifying the error,—*Ball v. Hamlet*,<sup>a</sup> and the plaintiff should have applied to amend it; *Ward v. Peel*.<sup>b</sup> from which case it may be inferred that the order for the writ should have preceded. The summons to try "the issue," there being two, is obviously erroneous.

<sup>a</sup> 8 Adol. & Ellis, 941.

<sup>a</sup> 1 C. Mu. & Ros.

<sup>b</sup> 1 Mu. & W.

*Patteson, J.*—That is no doubt defective, and must be amended. On the other point, I have ever thought that there was a difficulty in strictly observing the rule of court, as it cannot be ascertained, before the judge's order has been obtained, before what jurisdiction the cause will be tried. The act says it shall be lawful for the court, &c. to order and direct that the issue or issues *joined* shall be tried before the sheriff. How can a judge direct an issue joined to be tried before it is joined? No doubt good sense and reason would seem to require that the judge's order should be obtained first, but it not unfrequently happens, when application is made for the writ before the delivery of the issue, that it is objected on behalf of the defendant that no issue has been joined. No doubt when a plea is pleaded concluding to the country, the plaintiff may himself add the *similiter*; but the difficulty is, when the replication concludes to the country, and the joinder of issue would be the act of defendant. The Master is inclined to think the dates should not be filled in at all; I think they ought. There is one defect which must at all events be amended, and it will be the safer course for the plaintiff to amend generally; the notice of trial to stand. Rule accordingly.

*Dennett v. Hardy.* Q. B. P. C. M. T., 1844.

### CHANCERY SITTINGS.

*Previous to Easter Term, 1845.*

Lord Chancellor.

AT LINCOLN'S INN.

Monday . . . April 7	The Seal Day—Appeal Motions.
Tuesday . . . 8	Petition-day.
Wednesday . . . 9	
Thursday . . . 10	
Friday . . . 11	Appeals.
Saturday . . . 12	
Monday . . . 14	

*Easter Term.*

AT WESTMINSTER.

Tuesday . . . 15	Appeal Motions.
Wednesday . . . 16	Petition-day.
Thursday . . . 17	
Friday . . . 18	
Saturday . . . 19	Appeals.
Monday . . . 21	
Tuesday . . . 22	
Wednesday . . . 23	
Thursday . . . 24	Appeal Motions.
Friday . . . 25	(Petition-day) Unopposed Petitions only and Appeals.
Saturday . . . 26	
Monday . . . 28	
Tuesday . . . 29	Appeals.
Wednesday . . . 30	
Thursday . . . May 1	Appeal Motions.
Friday . . . 2	(Petition-day) Unopposed Petitions only and Appeals.
Saturday . . . 3	
Monday . . . 5	
Tuesday . . . 6	Appeals.
Wednesday . . . 7	

Thursday . . . 8 Appeal Motions.

*Note.*—Such days as his Lordship is occupied in the House of Lords excepted.

Master of the Rolls.

*Before and in Easter Term, 1845.*

AT THE ROLLS.

Monday . . . April 7	Motions.
Tuesday . . . 8	Petitions—The Unopposed First.
Wednesday . . . 9	
Thursday . . . 10	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 11	
Saturday . . . 12	
Monday . . . 14	

AT WESTMINSTER.

Tuesday . . . April 15	Motions.
Wednesday . . . 16	Petitions—The unopposed first.
Thursday . . . 17	
Friday . . . 18	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 19	
Monday . . . 21	
Tuesday . . . 22	
Wednesday . . . 23	Petitions—The unopposed first.
Thursday . . . 24	
Friday . . . 25	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 26	
Monday . . . 28	
Tuesday . . . 29	
Wednesday . . . 30	Petitions—The unopposed first.
Thursday . . . May 1	
Friday . . . 2	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 3	
Monday . . . 5	
Tuesday . . . 6	
Wednesday . . . 7	Petitions—The unopposed first.
Thursday . . . 8	
Friday . . . 9	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 10	
Monday . . . 11	
Tuesday . . . 12	
Wednesday . . . 13	Petitions—The unopposed first.
Thursday . . . 14	
Friday . . . 15	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 16	
Monday . . . 18	
Tuesday . . . 19	
Wednesday . . . 20	Petitions—The unopposed first.
Thursday . . . 21	
Friday . . . 22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 23	
Monday . . . 25	
Tuesday . . . 26	
Wednesday . . . 27	Petitions—The unopposed first.
Thursday . . . 28	
Friday . . . 29	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 30	
Monday . . . 1	
Tuesday . . . 2	

Vice-Chancellor of England.

*Previous to Easter Term, 1845.*

AT LINCOLN'S INN.

Monday . . . April 7	The Seal Day—Motions.
Tuesday . . . 8	Petition-day.
Wednesday . . . 9	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday . . . 10	
Friday . . . 11	Unopposed Petitions, Short Causes and Causes.
Saturday . . . 12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 14	

**Easter Term.**

AT WESTMINSTER.

Tuesday	15	Motions.
Wednesday	16	Petition-day.
Thursday	17	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	18	{ Unopposed Petitions, Short Causes, and Causes.
Saturday	19	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Monday	21	{ Dirs.
Tuesday	22	{ Dirs.
Wednesday	23	{ Dirs.
Thursday	24	Motions.
Friday	25	{ (Petition-day) Unopposed first, Short Causes and Causes.
Saturday	26	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Monday	28	{ Dirs.
Tuesday	29	{ Dirs.
Wednesday	30	{ Dirs.
Thursday	May 1	Motions.
Friday	2	{ (Petition-day) Unopposed first, Short Causes and Causes.
Saturday	3	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Monday	5	{ Dirs.
Tuesday	6	{ Dirs.
Wednesday	7	{ Dirs.
Thursday	8	Motions.

**Vice-Chancellor Knight Bruce.***Previous to Easter Term, 1845.*

AT LINCOLN'S INN.

Monday	April 7	The Seal Day—Motions.
Tuesday	8	{ (Petition-day) Petitions and Causes.
Wednesday	9	{ Bankrupt Petitions and Causes.
Thursday	10	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	11	{ Short Causes and Causes.
Saturday	12	{ Short Causes and Causes.
Monday	14	{ Bankrupt Petitions.

**Easter Term.**

Tuesday	15	Motions.
Wednesday	16	{ (Petition-day), Bankrupt Petitions and Cause Petitions.
Thursday	17	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Friday	18	{ Directions.
Saturday	19	{ Short Causes and Causes.
Monday	21	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	22	{ Bankrupt Petitions and Ditto.
Wednesday	23	{ Bankrupt Petitions and Ditto.
Thursday	24	Motions.
Friday	25	{ (Petition-day) Petitions and Causes.
Saturday	26	{ Short Causes and Causes.
Monday	28	{ Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Tuesday	29	{ Causes, and Fur. Directions.
Wednesday	30	{ Bankrupt Petitions and Ditto.
Thursday	May 1	Motions.
Friday	2	{ (Petition-day) Petitions and Causes.
Saturday	3	{ Short Causes and Causes.

Monday	5	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Tuesday	6	{ Dirs.
Wednesday	7	{ Bankrupt Petitions and Ditto.
Thursday	8	Motions.

**Vice Chancellor Stigam.***Previous to Easter Term, 1845.*

AT LINCOLN'S INN.

Monday	April 7	Motions.
Tuesday	8	{ (Petition-day) Petitions and Causes.
Wednesday	9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	10	{ Short Causes and Ditto.
Friday	11	{ Short Causes and Ditto.
Saturday	12	{ Short Causes and Ditto.
Monday	14	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Directions.

**Easter Term.**

Tuesday	15	Motions.
Wednesday	16	{ (Petition-day) Petitions and Causes.
Thursday	17	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Friday	18	{ Dirs.
Saturday	19	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	21	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Tuesday	22	{ Dirs.
Wednesday	23	{ Dirs.
Thursday	24	Motions and Ditto.
Friday	25	{ (Petition-day) Pleas, Demurs., Exons, Causes, and Fur. Dirs.
Saturday	26	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	28	{ Pleas, Demurrers, Exons, Causes, and Further Directions.
Tuesday	29	{ Causes, and Further Directions.
Wednesday	30	{ Causes, and Further Directions.
Thursday	May 1	Motions and Ditto.
Friday	2	{ (Petition-day) Pleas, Demrs., Exons, Causes, and Further Directions.
Saturday	3	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	5	{ Pleas, Demurrers, Exceptions, Causes, and Fur.
Tuesday	6	{ Dirs.
Wednesday	7	{ Dirs.
Thursday	8	Motions and Ditto.

**MASTERS EXTRAORDINARY IN CHANCERY.***From Feb. 18th to March, 21st 1845, both inclusive, with dates when gazetted.*

Ashton, Joseph Yates, Liverpool.	March 21.
Blake, James Joseph, Croydon, Surrey.	Feb. 21.
Gibson, Richard, Wigan, Lancaster.	Feb. 18.
Hamp, Francis, Birkenhead, Chester.	March 21.
Hughes, Edward, Ellesmere, Salop.	Feb. 25.
Marsh, Robert, Ickles, near Rotherham, York.	March 4.
Pinneger, John Alexander Mawley, Chippenham.	Wilts. Feb. 28.
Whidborne, John, Teignmouth, Devon.	March 7.
Williams, Robert, jun., Carnarvon.	March 21.
Yorke, Henry, Oundle, Northampton.	Feb. 21.

**DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.**

*From Feb. 18th to March 21st, 1845, both inclusive, with dates when gazetted.*

- Brabner, Samuel, and John Atkinson, Attorneys, Solicitors, and Notaries Public, Liverpool. March 4.
- Dudding, John, and J. W. Danby, Attorneys and Solicitors, Lincoln. March 7.
- Hegginbottom, Alfred, and John Brooks, Attorneys, Solicitors, and Conveyancers, Ashton-under-Lyne, Lancaster. Feb. 21.
- Helm, Charles Augustus, and Alfred Catchmayd, Attorneys and Solicitors, Worcester. March 14.
- Lane, Thomas, and Richard Underwood, Solicitors, Castle Street, Hereford. Feb. 28.
- Ridgway, John Withershaw, Henry Ford, and Henry, Edward Ridgway, Manchester, Attorneys and Solicitors. Feb. 18.
- Stubbs, John, and Charles Rollings, Birmingham. Feb. 25.

**BANKRUPTCIES SUPERSEDED.**

*From Feb. 18th to March 21st, 1845, both inclusive, with dates when gazetted.*

- Diamond, James, 1, George Street, Tower Hill, Merchant. Feb. 18.
- Eldridge, Ralph, Bletchingly, Surrey, Innkeeper. Feb. 28.
- Henderson, William, and James Henry Veysey, Netham Works, Moorfields, Gloucester, Manufacturing Chemists. March 18.
- Higgins, Henry, Leeds, Merchant. March 4.
- Makepiece, Samuel, Mitcham, Surrey, Silk, Cotton, and Woollen Printer. March 14.
- Williams, John Pownall, East Stonehouse, Devon, Draper. Feb. 28.

**BANKRUPTS.**

*From Feb. 18th to March 21st, 1845, both inclusive, with dates when gazetted.*

- Bayley, Edward, Cheswardine, Salop, Apothecary, Bittleston, Off. Ass.; *Hammond*, Furnival's Inn; *Brown*, Wem; *Hodgson*, 2, Cherry Street, Birmingham. Feb. 28.
- Behnes, William, 13, Osnaburgh Street, New Road, Marble and Stone Merchant, and Sculptor. *Turquand*, Off. Ass.; *Lawrence*, & Co., Bucklersbury. Feb. 21.
- Birley, John Peart, 26, Brompton Row, Kensington, Plumber and Glazier. *Whitmore*, Off. Ass.; *Buchanan* & Co., Basinghall Street. Feb. 18.
- Botcherby, John, late of Darlington, Durham, Coal Owner. *Wakley*, Off. Ass.; *Lesman* & Co., York; *Donkin* & Co., Newcastle-upon-Tyne; *Tyas*, Beaufort Buildings, Strand. March 14.
- Brown, James, late of 46, Cheapside, now of 2, Skinner Street, Snow Hill, Perfumer. *Alsager*, Off. Ass.; *Torkington*, New Bridge Street, Blackfriars. Feb. 25.
- Brown, Richard, Kingston-upon-Hull, Joiner and Builder. *Hope*, Off. Ass.; *Hicks* & Co., Gray's-Inn. *Galloway* & Co., Hull; *Payne* & Co., Leeds. March 18.
- Butterfill, William, Sheffield, Grocer and Flour Dealer. *Freeman*, Off. Ass.; *Tattershall*, Great James Street, Bedford Row; *Broadbent*, Sheffield; *Blackburn*, Leeds. March 7.
- Carter, George John, Hornsey Cottage, Hornsey, Road, Carpenter and Builder. *Belcher*, Off.

Ass.; *Chambers*, 14, Basinghall Street. March 21.

- Cawthorn, William, jun., Salisbury Wharf, Salisbury Street, Strand, Wine Merchant. *Groom*, Off. Ass.; *Lawrence*, 25, Old Fish Street, Doctors' Commons. March 7.
- Clark, Robert, jun., late of Mann's Wharf, Montagu Close, Southwark, Wharfinger, but now of 12, Paradise Row, Rotherhithe. *Bell*, Off. Ass.; *Young* & Co., Tokenhouse Yard. March 4.
- Clegg, Thomas, late of Tanner's Hill, Deptford, and formerly of Leeds, Coal Merchant and Master Mariner. *Follett*, Off. Ass.; *Jones*, Mincing Lane. March 18.
- Closson, Edward, 17, Lower Holborn, Stationer. *Whitmore*, Off. Ass.; *Fraser*, 2, Furnival's Inn. Feb. 18.
- Cole, Frederic Lindsey, 101, Fenchurch Street, Wine Merchant. *Whitmore*, Off. Ass.; *Godard*, 101, Wood Street, Cheapside. March 14.
- Crabb, James, Great Tey, Essex, Bricklayer, Builder, and Victualler. *Johnson*, Off. Ass.; *Bell*, Bedford Row. Feb. 21.
- Cramawick, Francis, Bridlington Quay, Bridlington, York, Innkeeper. *Young*, Off. Ass.; *Taylor*, Bridlington; *Blackburn*, Leeds. Feb. 21.
- Crew, Samuel, 3, Harlestone Street, Pennywell Road, St. Phillips and Jacob, Bristol, Coal Merchant. *Kynaston*, Off. Ass.; *Gray*, 6, Exchange Buildings, Bristol, and Commercial Rooms, Bath. Feb. 18.
- Crowther, Ely Walker, Seamonden, Huddersfield, York, Woollen Cloth Manufacturer. *Hope*, Off. Ass.; *Meggison* & Co., Bedford Row; *Sykes* & Co., Huddersfield. March 4.
- Dale, William, 109, London Wall, Boot and Shoe Maker. *Belcher*, Off. Ass.; *Pryer*, 17, Pavement, Finsbury Square. Feb. 21.
- Dalton, James, Salford, Lancaster, Joiner and Builder. *Pott*, Off. Ass.; *Woodburne*, Lower King Street, Manchester; *Richards* & Co., 29, Lincoln's Inn Fields. Feb. 28.
- Daniel, William, Manchester, Cabinet Maker. *Pott*, Off. Ass.; *Sales* & Co., Aldermanbury; *Atkinson* & Co., 3, Norfolk Street, Manchester. March 18.
- Danks, John, Birmingham, Wharfinger. *Bittleston*, Off. Ass.; *Whateleys* & Co., Waterloo Street, Birmingham. Feb. 21.
- Dansday, John Henry, 4, Glasshouse Street, Regent Street, Tailor. *Whitmore*, Off. Ass.; *Sutcliffe*, New Bridge Street, Blackfriars. Feb. 25.
- Davis, Lovel, Ewhurst, Sussex, Wine and Spirit Agent. *Green*, Off. Ass.; *Gregson* & Co., 8, Angel Court, City; *Young*, Battle, Sussex. Feb. 25.
- Day, John Rock, late of White Hart Public House, White Hart Street, Drury Lane, Victualler, but now of the Queen's Prison, Surrey. *Bell*, Off. Ass.; *Smith*, Barnard's Inn, Holborn. March 7.
- Debney, William, Mistley, Essex, Victualler and Cattle Dealer. *Edwards*, Off. Ass.; *Wire* & Co., 9, St. Swithin's Lane; *Barnes*, Colchester. March 14.
- Dees, William and James, and James Hogg, Newcastle-upon-Tyne, Builders. *Wakley*, Off. Ass.; *Williamson* & Co., 4, Verulam Buildings, Gray's Inn; *Bates* & Co., Newcastle-upon-Tyne. Feb. 28.
- Dix, Thomas, Liverpool, Shoe Dealer. *Morgan*,

- Off. Ass.; *Chester & Co.*, Staple Inn; *Hodgson*, Liverpool. March 14.
- Dolbell, Lawrence Daniel, Ravensbury Mill, Lower Mitcham, Surrey, Dyer. *Edwards*, Off. Ass.; *Beart*, 4, Bouverie Street, Fleet Street. Feb. 21.
- Ferguson, William, Liverpool, Draper and Tea Dealer. *Turner*, Off. Ass.; *Wilkin*, 3, Furnival's Inn; *Wardle*, Liverpool. March 21.
- Ferrie, Thomas, Wotton Bassett, Wilts, Grocer and Tea Dealer. *Kynaston*, Off. Ass. Feb. 21.
- Fulljames, Alfred Vincent, 21, Bridewell Lane, Bath, Auctioneer. *Kynaston*, Off. Ass.; *Gray*, 2, Nicholas Street, Bristol. March 21.
- George, Lewis, late of 217, Regent-street, now of Ion Cottage, Durlam Road, Kingaland Road, Shawl Warehouseman and Furrier. *Graham*, Off. Ass.; *Young & Co.*, St. Mildred's Court. Feb. 21.
- Gorbell, Thomas Kewell, Bedford Place, Commercial Road, Bookseller and Stationer. *Turguand*, Off. Ass.; *Turner*, Mount Place, Whitechapel Road. March 7.
- Gordon, James Brodie, and Robert Gordon, Orchard House, Poplar, Coopers. *Groom*, Off. Ass.; *Stevens & Co.*, Queen Street, Cheapside. Feb. 28.
- Granger, William, Relly Mill, Durham, Paper Manufacturer. *Baker*, Off. Ass.; *Harle*, 2, Butcher Bank, Newcastle-upon-Tyne; *Smith*, Durham; *Chisholme & Co.*, 64, Lincoln's Inn Fields. March 18.
- Gray, James, Manchester, Upholsterer. *Stanway*, Off. Ass.; *Soles & Co.*, Aldermanbury; *Todd*, Norfolk Street, Manchester. Feb. 25.
- Green, John, 54, Pall Mall, and of 99, Sloane Street, Wine Merchant. *Atsager*, Off. Ass.; *Baxendale & Co.*, Great Winchester Street, City. March 14.
- Green, Albert, 7, Grand Parade, Brighton, Apothecary. *Edwards*, Off. Ass.; *Freeman & Co.*, 39, Coleman Street; *Freeman & Co.*, Ship Street, Brighton. March 11.
- Green, James and Charles, Borough Road, Corn Dealers and Cab Masters. *Johnson*, Off. Ass.; *Smith*, Barnard's Inn. Feb. 28.
- Griffiths, Thomas, late of Blaenfed, Llandugwydd, Cardigan, Auctioneer and Timber Merchant, now a prisoner in Cardigan gaol. *Miller*, Off. Ass.; *Smith*, Cardigan. March 11.
- Griffiths, Thomas, jun., High Street, Wem, Salop, Wine and Spirit Merchant. *Whitmore*, Off. Ass.; *Hammond*, Furnival's Inn; *Brown*, Wem; *Hodgson*, Cherry Street, Birmingham. Feb. 18.
- Ground, Philip, late of Dormington, Lincoln, Tallow Chandler. *Bell*, Off. Ass.; *James & Co.*, Ely Place. March 21.
- Hagg, Ichabod, Colchester, Essex, Tailor, Draper and Outfitter. *Belcher*, Off. Ass.; *Soles & Co.*, Aldermanbury. Feb. 18.
- Hall, William, Claypath, Durham, Grocer and Flour Dealer. *Baker*, Off. Ass.; *Marshall*, Durham; *Harle*, 2, Butcher Bank, Newcastle-upon-Tyne; *Rogerson*, 50, Lincoln's Inn Fields. Feb. 18.
- Hardisty, William, Wakefield, York, Whitesmith and Ironmonger. *Young*, Off. Ass.; *Fiddey*, Temple; *Brown*, Wakefield. March 11.
- Hardwick, William, Holborn, Draper. *Edwards*, Off. Ass.; *Soles & Co.*, 68, Aldermanbury. March 4.
- Hardy, John and George, Wisbech, Saint Peter, Cambridge, Grocers. *Turguand*, Off. Ass.; *Jenkins & Co.*, New Inn. March 7.
- Hart, James, Circus Street, Greenwich, Builder. *Pennell*, Off. Ass.; *Yates*, Bury Street, St. Mary Axe. March 4.
- Herring, James Stephen, 1, Cecelia Place, Spa Road, Bermondsey, Builder. *Fallett*, Off. Ass.; *Rippon*, 190, Blackfriars Road. March 7.
- Hester, Henry, late of 1, Ratcliffe Terrace, Gaskell Road, Tallow Chandler. *Green*, Off. Ass.; *Young & Co.*, 2, St. Mildred's Court, Poultry. March 18.
- Holdforth, David, 14, Tarnpike Row, Stratford, Essex, Grocer and Cheesemonger. *Johnson*, Off. Ass.; *Wright*, 13, Cook's Court, Carey Street. March 11.
- Holman, John, (late of the Market House Inn, Guinea Street, Exeter, Victualler,) now of 2, Grosvenor Place, St. Sidwell Street, Exeter, out of business. *Hurtzel*, Off. Ass.; *Turner*, Exeter; *Spyer*, Broad Street Buildings. Feb. 18.
- Hone, William, 4, King Street, Reading, Berks, Coach Proprietor and Porter Merchant. *Whitmore*, Off. Ass.; *Webb*, Lad Lane, City. March 21.
- Hope, Charles Douglas, 12, Greenhill Terrace, Chorlton-upon-Medlock, and of 51, King Street, Manchester, British and Foreign Broker. *Hobson*, Off. Ass.; *Cornthwaite & Co.*, 14, Old Jewry Chambers; *Moseley*, 11, Back King Street, Manchester. March 18 and 14.
- Howard, Thomas Nelson Deaton, late of Finchurch Street, Glover, and also of 13, Bankshall Street, Calcutta, Merchant and Broker, now lodging at the Adelaide Hotel, London Bridge. *Whitmore*, Off. Ass.; *Buchanan & Co.*, Basinghall Street. March 14.
- Hulley, William Bakewell, Derby, Tailor. *Fraser*, Off. Ass.; *Tattershall*, Great James Street; *Broadbent*, Sheffield; *Todd*, Norfolk Street, Manchester. March 18.
- Hurd, Samuel, 153, High Street, Rochester, Dealer in China, Glass, and Earthenware. *Greer*, Off. Ass.; *Smith*, Wilmington Square. March 14.
- Hutchings, John, Bath, Somerset, late of Regent Street, Boot Maker. *Kynaston*, Off. Ass.; *Bachelor & Co.*, Bath. Feb. 18.
- Ibbotson, William, Sheffield, York, Merchant. *Freeman*, Off. Ass.; *Moss*, 4, Cloak Lane; *Branson*, Sheffield. March 18.
- Jacobs, Charles, Farringdon Market, Fruit Salesman. *Belcher*, Off. Ass.; *Overton & Co.*, 25, Old Jewry. March 7.
- Kewley, James, Liverpool, Tailor and Draper. *Cassano*, Off. Ass.; *Cornthwaite & Co.*, Old Jewry; *Pemberton*, 11, Cable Street, Liverpool. March 14.
- Knight, William, Henry Street, Manchester, Old Cloth Manufacturer. *Pott*, Off. Ass.; *Melinson & Co.*, 3, Elm Court, Temple; *Atkinson & Co.*, 3, Norfolk Street, Manchester. Feb. 18.
- Knott, Alfred, late of Treyford, Sussex, Miller, but now of Brighton, out of business. *Graham*, Off. Ass.; *Soles & Co.*, 68, Aldermanbury. March 11.
- Lane, John, Hope and Anchor Inn, Redcliff Hill, Bristol, Victualler. *Acraman*, Off. Ass.; *Gillard & Co.*, Bristol. March 14.
- Lane, Theophilus, Hereford, Coal Merchant and Scrivener. *Bittlestone*, Off. Ass.; *Lanvaine*, Hereford; *Suckling*, Birmingham. March 14.
- Langston, Thomas, Manchester, Share Broker.

Fraser, Off. Ass.; *Hitchcock & Co.*, Manchester; *Johnson & Co.*, Temple. Feb. 21.

Lee, Charles, Wakes Colne, Essex, Miller. *Graham*, Off. Ass.; *Marriott*, New Inn and Colchester. Feb. 25.

Loriere, Baron Vernuil de Beaulieu, otherwise Baron Verneuil de Beaulieu, late of Holly Bush Place, Bethnal Green, but now of Regent's Terrace, Commercial Road East, Soap Manufacturer. *Johnson*, Off. Ass.; *Barron & Co.*, Bloomsbury Square. March 21.

Machu, James Lewis, Maccleasfield, Chester, Silk Trimming Manufacturer. *Groom*, Off. Ass.; *Cox*, 16, Plinner's Hall, Old Broad Street. March 21.

Mackay, Daniel, (late of St. John's, New Brunswick, Merchant,) now of Liverpool, Master Mariner. *Bird*, Off. Ass.; *Sharpe & Co.*, London; *Miller & Co.*, Liverpool. March 7.

Marshall, Samuel, Kingston-upon-Hull, Builder. *Young*, Off. Ass.; *Penniger & Co.*, John Street, Bedford Row; *England & Co.*, Hull; *Bulmer*, Leeds. March 14.

Meek, William, Southampton, Ironmonger. *Turquand*, Off. Ass.; *Bircham & Co.*, 15, Bedford Row. March 14.

Metcher, Thomas, Southampton, Plumber and Glazier. *Belcher*, Off. Ass.; *Hindmarsh & Co.*, Jewin Crescent, Cripplegate. March 4.

Mills, William Henry, Mark Lane, Wine and Spirit Merchant. *Pennell*, Off. Ass.; *Hughes & Co.*, 17, Bucklersbury. March 14.

Milward, Thomas, late of Epperstone, Notts, Miller. *Valpy*, Off. Ass.; *Shilton & Co.*, Nottingham. March 21.

Murcott, Cornelius, now or late of Birmingham, Factor. *Christie*, Off. Ass.; *Tyndall & Co.*, Birmingham. Feb. 25.

Nicolay, Lewis John, St. George's Fields, Woolwich, Draper. *Pennell*, Off. Ass.; *Ashurst*, Cheapside. March 4.

O'Rooke, Thomas and William Birks, Print Street, Manchester, Commission Agents. *Stanway*, Off. Ass.; *Chilton & Co.*, Chancery Lane; *Slaney*, Birmingham; *Foster*, 26, Cross Street, Manchester. March 18.

Painter, Mary Conway, 102, Great Peter Street, Westminster, Grocer and Tea Dealer. *Alager*, Off. Ass.; *Hildyard*, 8, Furnival's Inn. March 14.

Pell, William, Newcastle-upon-Tyne, Linen Draper. *Baker*, Off. Ass.; *Griffith & Co.*, Arcade, Newcastle-upon-Tyne; *Griffith*, 6, Raymond's Buildings, Gray's Inn. March 7.

Price, John, Oaken Gates, Salop, Draper. *Whitmore*, Off. Ass.; *Garbett*, Wellington; *Harrison & Co.*, 8, Edmund Street, Birmingham. March 18.

Ralph, John, late of Crown Inn, Weston, near Bath, and now of 30, Walcot Street, Bath, Innkeeper. *Kynaston*, Off. Ass.; *Gray*, 2, Nicholas Street, Bristol and Commercial Rooms, Bath. Feb. 28.

Ransford, Charles, Stoneley, South Tottenham, Middlesex, Grocer and Cheesemonger. *Bell*, Off. Ass.; *Kempster*, Kennington Lane. Feb. 21.

Rawlings, Mary and Francis John, Cheltenham, Cabinet Makers. *Hutton*, Off. Ass.; *Brookes & Co.*, Tewkesbury and Cheltenham; *Peters & Co.*, Bristol; *Talbot*, Kidderminster. Feb. 28.

Rees, Thomas, Liverpool, Porter and Ale Brewer. *Morgan*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Harvey & Co.*, Liverpool. Feb. 18.

Reeves, William, 34 and 35, Belvedere, Walcot,

Somerset, Coach Builder and Harness Maker. *Hutton*, Off. Ass.; *Gray*, Exchange Buildings, Bristol and Commercial Buildings, Bath. Feb. 21.

Roberts, John, late of Liverpool, then of Bootle, near Liverpool, Grocer, and now of Liverpool, Dealer in Potatoes and Slates. *Casnows*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Moss*, 9, Dale Street, Liverpool. March 11.

Robinson, William Henry, Leicester, Wine and Spirit Merchant. *Christie*, Off. Ass.; *Dimmock & Co.*, Sise Lane; *Ludlow*, Birmingham. March 21.

Robinson, Thomas, Eccleston, near Prescott, Lancaster, Lime Burner, Rope Manufacturer, Carrier, and Flat or Barge and Ship Owner. *Casnows*, Off. Ass.; *Norris & Co.*, 19, Bartlett's Buildings, Holborn; *Taylor*, St. Helen's. March 21.

Rowe, John Strudwick, Newcastle-under-Lyne, Draper. *Christie*, Off. Ass.; *Soles & Co.*, Aldermanbury; *Suckling*, Birmingham. March 14.

Salmon, George, 15 Wharf, City Road Basin, Timber Merchant. *Follett*, Off. Ass.; *May*, 14, Queen's Square, Bloomsbury. March 7.

Samson, Gerard, Weymouth and Malcombe Regis, Dorset, Corn Dealer. *Hernaman*, Off. Ass.; *Combe*, Staple Inn; *Phillips*, Weymouth; *Terrill*, Exeter. Feb. 21.

Schofield, James, now or late of Greenacres Moor, Lancaster, Grocer. *Stanway*, Off. Ass.; *Barrett*, Jun., Town Hall Buildings, Manchester; *Bower & Co.*, Chancery Lane. Feb. 18.

Scott, Joseph, Liverpool, Paper Dealer. *Turner*, Off. Ass.; *Perkes & Co.*, Bedford Row; *Greatley*, Castle Street, Liverpool. Feb. 18.

Sharnan, Frederick, 21, West Square, Southwark, late of 2, Barge Yard, Bucklersbury, and also at 37, Gracechurch Street, Boot Maker. *Edwards*, Off. Ass.; *King*, 40, St. Mary Axe. March 18.

Smith, John, Rugeley, Stafford, Money Scrivener. *Valpy*, Off. Ass.; *Bennett & Co.*, Wolverhampton. March 14.

Smith, Charles, and Edward John Chapman, Bradford, York, and of Birkenhead, Chester, Civil Engineers and Contractors. *Froeman*, Off. Ass.; *Sudlow & Co.*, Chancery Lane; *Lee*, Leeds. March 21.

Spencer, William, Wallingford, Berks, Brewer. *Alager*, Off. Ass.; *Smith*, Golden Square. March 7.

Stocks, George William, Norwich, Linen Draper. *Bell*, Off. Ass.; *Clowes & Co.*, King's Bench Walk, Temple. March 18.

Struckett, John, Wye, Kent, Grocer and Cheesemonger. *Green*, Off. Ass.; *Palmer & Co.*, Bedford Row; *King*, Maidstone. March 7.

Sumner, William Holmes, 51, High Street, Hoxton Old Town, Grocer and Tea Dealer. *Groom*, Off. Ass.; *Murray*, 11, London Street, Fenchurch Street. Feb. 25.

Sweeny, Charles Stewart, late of 25, Green Street, Grosvenor Square, afterwards of 50, Seymour Street, Portman Square, afterwards of 1, Albion Place, Hyde Park Square, and now of 11, Chester Place, Hyde Park Square, Apothecary. *Follett*, Off. Ass.; *Wade & Co.*, Frederick's Place, Old Jewry. March 21.

Taylor, James, Higher Walton, Chester, Farmer. *Hobson*, Off. Ass.; *Johnson & Co.*, Temple; *Needham*, 48, Pall Mall, King Street, Manchester. Feb. 21.

Taylor, Joshua, Whittlesea, Cambridge, Draper.



- Green*, Off. Ass.; *Solas & Co.*, 68, Aldermanbury. March 11.
- Thompson*, Julius, late of Frimley Hill, near Bagshot, Surrey, and still carrying on business at Wigmore Street, Cavendish Square, Cheesemonger. *Graham*, Off. Ass.; *Gauntlett*, Gray's Inn Place. March 14.
- Thornston*, Charles, Huddersfield, York, Stationer and Bookseller. *Fearn*, Off. Ass.; *Clark & Co.*, Sessions' House, Old Bailey; *Floyd & Co.*, Huddersfield. Feb. 21.
- Turner*, Henry, Theobald's Row, Bedford Row, Cowkeeper. *Johnson*, Off. Ass.; *Robinson & Co.*, Queen Street Place, Upper Thames Street. March 21.
- Wagner*, George, 41, Bloomsbury Square, Draper. *Balcher*, Off. Ass.; *Turner & Co.*, Basing Lane. March 14.
- Welch*, James, Coach and Horses, Ring Cross, Holloway, and of Chalgrave, Bedford, Victualler. *Follett*, Off. Ass.; *Wollen*, Bucklersbury. Feb. 28.
- Wells*, James, Winchcomb, Gloucester, Common Carrier and Coal Merchant. *Miller*, Off. Ass.; *Trenfield*, Winchcomb. Feb. 21.
- West*, Frederick, Southampton, Boot and Shoemaker. *Whitmore*, Off. Ass.; *Mackey & Co.*, Southampton; *Smith & Co.*, 12, Serjeants' Inn, Fleet Street. March 7.
- Wilkinson*, Thomas, Hartlepool, Durham, Draper. *Wakley*, Off. Ass.; *Marshall & Co.*, Durham; *Harle*, 2, Butcher Bank, Newcastle-upon-Tyne; *Rogerson*, 50, Lincoln's Inn Fields. Feb. 18.
- Williams*, William, 16, High Street, St. Giles's, Victualler. *Follett*, Off. Ass.; *Futvoys*, John Street, Bedford Row. March 18.
- Wilson*, Joseph, 114, Jernyn Street, St. James's, Boot Maker. *Pennell*, Off. Ass.; *Wright & Co.*, Golden Square. March 7.
- Whittenbury*, William Cornelius, Leeds, Cheese and Bacon Factor. *Fearn*, Off. Ass.; *Rushworth & Co.*, Staple Inn; *Sanderson*, Leeds. March 7.
- Woodgate*, Henry, Kingston, Great Canford, Dorset, Horse Dealer. *Hirtzel*, Off. Ass.; *Parr & Co.*, Poole; *Holms & Co.*, New Inn; *Warren & Co.*, Exeter. March 18.
- Woolfall*, Richard, Warrington, Lancaster, Butcher. *Hobson*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Rowe*, Lord Street, Liverpool. March 21.
- Wyatt*, Alfred, late of Highworth, Wilts, Victualler, now of Babmeas' Mews, Well Street, St. James's. *Follett*, Off. Ass.; *Taylor*, 10, South Place, Finsbury Square. Feb. 21.

## PARLIAMENTARY NOTICES.

THE following notices have been given of motions to come on after the Easter recess:—

### INSOLVENTS.

Mr. Henry Berkeley, to amend the Insolvent Act of last session, and provide greater security in recovering debts under 20l.

### CHANCERY COMPENSATIONS.

Mr. Watson has given notice of a motion for a select committee to inquire into orders for compensation made by the Lord Chancellor to the persons filling the offices of Clerk of the Enrolments, Comptrollers of Hanaper, Riding Clerk, Six Clerks, Sworn Clerks, Waiting Clerks, Agent or Record Keeper in the Court

of Chancery, under the 5 & 6 Vic. c. 103, and their right to compensation (and if any, to what amount) during their life, and for seven years after the death of such persons, and the circumstances attending the passing of that act.

### REMOVAL OF COURTS FROM WESTMINSTER.

Mr. C. Buller has given notice "to ask a question relative to the removal of the courts of law from Westminster."

We are glad to see this subject revived, and hope it will make some progress this session.

## THE EDITOR'S LETTER BOX.

ONE of our correspondents observes upon the statement which we made on the 1st of February, "that the suggestion of examination prizes or distinctions had been again revived, and that it was probable the subject would be taken into consideration by the examiners." We have received letters on both sides of the question, which will be duly considered.

It is the practice when a solicitor makes an affidavit to style himself "Gentleman," but he may omit this title and describe himself as an attorney-at-law, or a solicitor of the High Court of Chancery. The usual course is to state it thus: "A. B. of, &c., gentleman, one of the attorneys [or solicitors] of this honourable court."

It is not necessary, and is not usual, for an affidavit to be made of the execution of a clerk's articles by both witnesses. One is quite sufficient.

The 6 & 7 Viet. c. 73, repeals so much of the old statute of 1 Henry 5, cap. 4, as provided that no under-sheriff shall be attorney in the King's courts during the time he was in office. It is not necessary, therefore, as it used to be, that under-sheriffs should assign their practice during the year of office. This is one of the several alterations made by that act in favour of the profession, in return for the taxation of conveyancing bills.

We cannot encounter the responsibility of answering questions arising on the Stamp Act; but the following points may be useful to our readers as having occurred in the practice of our correspondents:—

What are the proper stamps to be used upon a transfer of mortgage in fee for 400l., with a further advance of 100l. discharged from the equity of redemption subsisting under the original mortgage, with a fresh proviso and covenant for payment of the amount (500l.), secured by the transfer inserted, and also a power of sale which the original mortgage does not contain? Our correspondent refers to the cases of *Doe dem. Bartley v. Gray*, 3 Adol. & Ellis, 89, and *Brown v. Pegg*, 13 Law Journal, (Q. B.) 270, New Series.

A. agrees to enter into the service of B. as his manager for two years certain, at from 90l. to 100l. salary per annum, payable quarterly:—Will 2s. 6d. stamp duty on the memorandum of agreement be sufficient? or what stamp duty will be requisite?

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, APRIL 5, 1845.

———" Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

**THE CHURCH DISCIPLINE ACT.**

CERTAIN proceedings having recently taken place under the Church Discipline Act, 3 & 4 Vict. c. 86, which, although not the first, have attracted much attention, it may be useful, now that those proceedings have come to a close, to give some account of this act.

Previous to this act, the proper jurisdiction for taking cognizance of immoral conduct, irregularity in the discharge of duty, the preaching or maintaining false doctrine, was in the Ecclesiastical Courts. But the authority of these courts has been superseded by the above act, by which it is enacted, (s. 23,) that no criminal suit or proceeding against a clerk in holy orders, for any offence against the laws ecclesiastical, shall be instituted in any Ecclesiastical Court otherwise than is enacted and provided by the act.

The course provided by the act is as follows: In every case of any clerk in holy orders who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report, the bishop of the diocese, on the application of any party complaining thereof, or of his own mere motion, may issue a commission to five persons for the purpose of making inquiry into the grounds of such charge or report.

Offences against the laws ecclesiastical here mentioned would seem to include every offence which could possibly be committed by an ecclesiastic, whether of criminal or immoral conduct, or of maintaining false doctrines, or of irregularity in

the discharge of his duty. So that whether the charge be that of felony or of drunkenness, for example, or other immorality, or of improperly performing the marriage service, refusing to bury or baptize, publishing doctrines in derogation of the Book of Common Prayer, or its contents, &c.,—the mode of proceeding is in every case the same; and this preliminary inquiry is in the first instance to be made into the truth or falsehood of the charge. Nor would a conviction in a criminal court, as it seems, supersede the necessity of first issuing the commission.\*

Fourteen days at least before issuing the commission notice must be sent, under the hand of the bishop, containing an intimation of the nature of the alleged offence, with the names, addition, and residence of the party applying for the commission. (Sec. 3.)

The commissioners are to proceed to examine witnesses upon oath to ascertain whether there be sufficient *prima facie* grounds for instituting any further proceedings against the accused party. (Sec. 4.) The proceedings may be public, unless on the special application of the party accused, when a private hearing must be allowed. (Sec. 4.)

The commissioners, it is to be observed, are not to pronounce sentence. They are to report to the bishop, and if they report that there is ground for further proceedings, articles are to be drawn up, to be approved and signed by an advocate practising in Doctors' Commons, and to be served on the accused. (Sec. 7.)

\* Cripps' Laws of the Church, p. 32.

In the late proceeding against the Rev. Mr. Monckton, it is to be noted that counsel were allowed to address the commissioners on behalf of the accused; but Dr. Lushington, one of the commissioners, desired that this should not be considered as a precedent.

The bishop may then summon the accused before him, and if the party admits the truth of the articles, the bishop or his commissary, appointed for that purpose, may at once pass sentence according to ecclesiastical law. (Sec. 5.) If, on the other hand, the person accused refuses or neglects to appear, or does not admit the truth of the articles, the bishop may proceed to hear the cause, with the assistance of three assessors, to be nominated by him, one of whom must be either an advocate who has practised not less than five years in the court of appeal of the province, a serjeant-at-law, or a barrister of seven years' standing; and neither of them must be either the dean of the cathedral church, or one of his archdeacons, or his chancellor. All sentences then pronounced by the bishop or his commissary are as good and effectual in law, and may be enforced by the same means as a sentence pronounced by an Ecclesiastical Court. (Sec. 12.) An appeal is, however, allowed to the archbishop, and ultimately to the Judicial Committee of the Privy Council. (Sec. 15.)

This act therefore constitutes a new tribunal, which, to the extent of its jurisdiction, displaces the authority of the Ecclesiastical Courts.

## RECENT LAW REFORMS.

*To the Editor of the Legal Observer.*

SIR,—I am inclined to agree with your correspondent X. Y. Z., whose letter you printed in your last number, in much that he says with respect to the legislation of the last fifteen years. A great deal of it has been inconsiderate, some entirely uncalled for, and almost all perhaps resulting too much from individual efforts, than proceeding from some steady and regular body, which, surveying the whole subject, and looking on all sides, might project with care and execute with all necessary promptness, but also with due deliberation. The legislature as at present constituted, (and, probably, constitute it as you will,) is unfit for the delicate duty of amending the law. It has no machinery for settling acts of

this nature; I am induced almost to go so far as to say, it was never intended to have this power. This is the duty of lawyers; and not simply of lawyers, but of lawyers each expert in his particular department. And it is almost farcical to commit a bill for altering the law, every clause and every word of which is of importance, to a mixed body like that of either house of parliament, even assisted as they may be by the occasional help of some of the lawyers who may be among their members. The legislature can settle principles, but cannot work them out.

But while I admit this, I cannot allow your correspondent's eulogy on Lord Eldon to pass entirely unnoticed. Lord Eldon opposed all law reform, from the greatest to the smallest. The wiping off a cobweb from Westminster Hall he opposed as strenuously as an attempt to sap its foundations. Thus he opposed successfully Sir Samuel Romilly's bill for abolishing the punishment of death in cases of privately stealing to the amount of five shillings in a shop; nor did he hesitate to deal out the same measure to that amiable man's bill for rendering freehold estates subject to simple contract debts. Now I submit that this was neither proper nor politic. And hence, with some justice, to him has been ascribed the rapid movement which has taken place in this direction since his retirement from office. And it certainly appears to me that the argument to which your correspondent alludes is a sound one. If Lord Eldon had not opposed all and every reform in his time, from the smallest to the greatest, the course of law reform would have run more gently. To use your correspondent's words, Lord Eldon was "an insuperable barrier" whilst he remained in office; and when this barrier was removed, the stream which had been so long pent up burst along with a fury which carried all before it. But your correspondent will hardly contend that this was wise or judicious opposition on Lord Eldon's part. We must all allow that the law must be changed as circumstances alter. I need only cite the two great witnesses for this, alluded to with approbation by your correspondent, Lord Bacon and Sir M. Hale. Both these eminent men were the friends of steady and judicious reform in the law.

What then is to be done under existing circumstances? The body of the law is yet much unsettled; it is dislocated in all its members. Is it to be left in this state?

I doubt whether this is wise, or even possible. I fear we must go on with the doctor, or the patient will grow even worse, and may expire altogether. But certainly I recommend no further temporising; no more drafts "to be taken every two hours;" no more "pills as before." I venture to recommend a consultation. There should be a broad, deliberate, and systematic review of the law, which should be committed to the most competent men in the profession. I would have no more attempts to cure this little ailment, or that slight complaint. But let the real state of the law be inquired into, and let us have it put in such a state as will prevent the necessity of ceaseless change. This can only be done by taking a comprehensive view. I do not know how far John Bull may be disposed to bear the expense of more commissions; but it appears to me that in the present juncture the most economical course is to call in the best physician of the day, and to pay him his demand without grumbling. This is not a time when we can afford to put up with second-rate advice.

I am, Sir,  
Your obdt. servant,  
J.

## PRACTICAL POINTS OF GENERAL INTEREST.

### PAWNBROKER.

**PAWNBROKERS**, by the act called the Pawnbrokers' Act, 39 & 40 Geo. 3, c. 99, (following the previous acts, 30 Geo. 2, c. 24, and 24 Geo. 3, c. 42,) are allowed 20*l.* per cent. interest on goods pawned. These acts prescribe the rate of interest on certain loans, the scale not rising above 10*l.*, it being assumed by these acts that a larger sum would never be borrowed at one time of a pawnbroker on a pledge of goods. "Some other enactments," says Lord Denman, C. J., "may indeed raise an argument that this limitation was not intended, but we think all question on this point is removed by the judicial construction which the act has received from Lord Tenterden, in *Cowie v. Harris*, Moody & M. 141, and from the Court of Common Pleas, in *Tregoning v. Attenborough*, 7 Bing. 97. Conformably with these decisions, we hold that the Pawnbrokers' Act does not apply to loans of more than 10*l.*" *Pennell v. Attenborough*, 1 Dav. & M. 155.

But by stat. 2 & 3 Vict. c. 37, loans may be made to any amount on interest exceeding 5*l.* per cent., and although an advance exceeding 10*l.* be made by a pawnbroker, yet this would come within the protection of that act. "The

act of 2 & 3 Vict.," says Lord Denman, in the case already cited, "was in force at the time of the transaction now under our consideration, and without entering into a lengthened discussion of all that may be urged on either side as to the probable intention of the legislature, we hold that the loans in question are within the protection of that act, and that during its continuance usurious loans, without real security, are lawful." *Pennell v. Attenborough*, *ubi sup.* See also *Turquand v. Mosedon*, 7 M. & W. 504.

## NOTES ON EQUITY.

### DOCTRINE OF SET-OFF.

THE doctrine of set-off, like most other doctrines which prevail in courts of equity, is borrowed from that great storehouse of judicial principle, the Roman law. With the civilians, set-off was termed *compensation*, by which expression it is still known in the law of Scotland. It may be defined to be the reciprocal acquittal of demands between parties who are equally indebted to each other; as if A. owes 100*l.* to B., and B. the same amount to A., who does not perceive that these two demands ought in equity to be extinguished by set-off, or compensation? All nations, therefore, must have this doctrine or something equivalent to it in the practice of their courts. But while we readily admit the unerring rectitude of the rule in simple cases, (such as the elemental one just named,) it will be found that in complicated relations of parties and transactions, this doctrine is as fertile in producing difficulties and doubtful questions as almost any that can be mentioned. Thus, for instance, a joint debt cannot be set-off against a separate debt. As if I owe a man 100*l.*, and he and another jointly owe me 100*l.*, why should not set-off be allowed here? Because the claims on both sides are not *in pari casu*. It would be an injustice to allow me in a question with one of the joint debtors to get rid of my obligation to him by setting off against it his to me, which in equity was only equivalent to a moiety of the debt due from me to him. But put the case that one of the joint debtors is only a surety for the other. This would make a variance, for in such a case my demand against the principal debtor would be in substance the same as if the debt were separate; and if so, set-off should be permitted.\*

This preliminary statement is intended to introduce to the reader's attention a recent decision of Vice-Chancellor *Wigram*, where the doctrines we have just adverted to are very fully considered. The case in question was that of *Jones v. Mossop*, which will be found in the last number of Hare's Reports, vol. iii. p. 568, the circumstances of which were, that Jones was indebted by bond in the sum of 500*l.* to one John Reid; who dying intestate,

\* *Vulhani v. Noble*, 3 Mer. 593.

left Richard Reid, his only child and sole next of kin. Richard took out administration to his father, and became, thereupon, legally and equitably entitled to the amount secured by the bond. But in the interval between his father's death and the completion of his title as administrator, being pressed for money, Jones accommodated him with a loan of 50*l.*, and also became security to one Bevan for an advance of 300*l.* Richard Reid, who seems to have been a spendthrift, was some time thereafter imprisoned for debt; and an order was thereupon obtained, vesting his whole property and effects in the official assignee. Richard Reid died in 1840. In December of that year, Jones was forced to make good to Bevan the sums he had advanced to Richard Reid; amounting, with interest, to 377*l.* The official assignee took out administration *de bonis non* of John Reid, and thereupon commenced an action against Jones upon the bond. Upon this, Jones filed his bill, praying an injunction, and that he might have the benefit of set-off against the demand to the extent of the monies paid by him to and on behalf of Richard Reid. So that the question in the cause came to be this, whether Jones should be allowed, in coming to a settlement with the official assignee, to take credit for these monies. The Vice-Chancellor, after hearing the matter at considerable length, delivered judgment in favour of the claim of set-off. In the first place, his Honour observed that, as surety, Jones had a right at any moment to pay off the debts which he had guaranteed. He could, for example, have gone to Bevan and put an end to his demand, and then as debtor upon the bond he would have been entitled to say he had discharged Bevan's claim out of the money he owed upon the bond. This being clear, as it was unquestionably, the only point was whether the right was superseded by the circumstances which had occurred, as the lapse of time, the insolvency of Richard Reid, and the title set up by the official assignee. His Honour held, that nothing had transpired to prejudice the original equity which had opened to Jones. For with respect to the official assignee, he could only take what the insolvent could lawfully transfer. He could acquire nothing more. The right of set-off on these and other grounds, which were fully stated by the learned judge, must therefore be admitted, and the injunction continued.

#### NOTICES OF NEW BOOKS.

*Rules and Orders of the Superior Courts of Common Law, from the commencement of the Reign of William IV. to Hilary Term, 8th Victoria; with Notes, and a copious Index.* By EDWARD LAWES, Esq. of the Middle Temple, Special Pleader. London: Spettigue. 1845.

THIS is a book which will be of almost

daily use to the common law practitioner. Our readers will recollect the large powers which were conferred on the judges for the alteration of the practice and proceedings in actions at law,—a power which they appear to have very freely exercised, particularly during the first two or three years of the reign of William the Fourth. In the courts of equity the alteration is still going on; the appetite for change is there unsated. But in the common law courts there has been a pause for a considerable period in what may be called "organic changes" in practice, though new points of interpretation on the rules and orders are of course still proceeding.

Not long after the promulgation of the rules which effected a vast change, not only in the practice but in the pleadings of the common law courts, Mr. Jervis published an accurate and useful edition of them, with notes; and his work reached a fourth edition in 1839. Since the promotion of the learned editor to the rank of Queen's Counsel, it may be presumed the task of continuing the labour has been left to humbler individuals; and few we believe are better qualified than Mr. Lawes to collate the decisions on pleading and practice, and assist the practitioner through his difficulties. Mr. Jervis's work comprised an appendix of statutes relating to pleading and practice, which occupied more than half his volume; but the present editor has confined himself to the rules and orders, tables of fees and costs, and practical forms, issued by the fifteen judges since the commencement of the reign of William the Fourth, as applicable to all the common law courts, and those which have been made by each court respectively, and are now in force, with the new rules on the Crown Side of the Queen's Bench.

The forms of declaring contained in the rule of Trinity Term, 1 Will. 4, and the forms of *capias* and *distringas* to be issued into Lancaster and Durham, in the rule of Michaelmas Term, 3 Will. 4, are in this edition adapted to the present practice.

Great pains have been taken by Mr. Lawes, in the notes, to state the effect of the decisions on the several rules, showing the construction which the court has put upon them, and the principle intended to be established. We are unable to find room for any examples of the notes, because they would be unintelligible without setting out the rules, but they are done with much care and conciseness, and the

decisions are brought down to the latest period.

It may be useful to give a list of the rules, and we have added the general subject to which each relates. We recommend the author to do the same, by way of a table of contents, in his next edition.

The rules applying to *all* the Common Law Courts are as follow :—

Trinity, 1 Will. 4. Pleading and practice.  
Hilary, 2 Will. 4. Practice.  
Easter, 2 Will. 4. Writs and computation of time.  
Michaelmas, 3 Will. 4. Process.  
Hilary, 3 Will. 4. Return of writs.  
Trinity, 3 Will. 4. Prisoners.  
Trinity Vacation, 3 Will. 4. Bail.  
Michaelmas, 4 Will. 4. Bail.  
Hilary, 4 Will. 4. Pleading and practice.  
Hilary Vacation, 4 Will. 4. Scale of costs.  
Hilary Term, 6 Will. 4. Holidays and attorneys' examination.  
Easter, 6 Will. 4. Examination.  
Michaelmas, 7 Will. 4. Returning writs.  
Trinity, 7 Will. 4. Office hours.  
Michaelmas Vacation, 1 Vict. Fees of office and sheriffs' fees.  
Hilary, 1 Vict. Practice and sheriffs' fees.  
Hilary Vacation, 1 Vict. Returning writs.  
Trinity, 1 Vict. Practice and pleading.  
Michaelmas, 2 Vict. Fees on admission of attorneys.  
Hilary Vacation, 2 Vict. Forms of writs.  
Hilary, 3 Vict. Forms of writs.  
Trinity, 3 Vict. Costs.  
Hilary, 4 Vict. Ejectment.  
Trinity, 4 Vict. Judgment.  
Easter, 7 Vict. Satisfaction of judgment.  
Trinity, 7 Vict. Taxation on debts under 20*l*.

The rules applicable exclusively to the Court of *Queen's Bench* are :—

Hilary, 1 Vict. Ejectment.  
Michaelmas, 3 Vict. Quo warranto.  
Easter, 3 Vict. Attorneys' admissions.  
Trinity, 3 Vict. Attorneys' admissions.  
Michaelmas, 4 Vict. Peremptory paper and enlarged rules.  
Michaelmas, 5 Vict. Rules of prison.  
Hilary, 7 Vict. Crown side practice.

The rules confined to the Court of *Common Pleas* are :—

Easter, 1 Will. 4. Rule to plead.  
Easter, 2 Will. 4. Postea and inquisition.  
Hilary, 4 Will. 4. Acknowledgments of married women.  
Hilary, 1 Vict. Rules for judgment and bail.

The peculiar rules of the *Exchequer of Pleas* are :—

Michaelmas, 1 Will. 4. Practice.  
Hilary, 1 Will. 4. Nisi Prius sittings.  
Hilary, 7 Will. 4. Attachment.  
Hilary, 3 Vict. Notices of admission.

The only rule of the *Exchequer Chamber* is that of

Michaelmas, 2 Will. 4, relating to the taxation of costs.

Mr. Lawes gives a list of obsolete rules since 1 Will. 4, which are omitted in this collection. They are as follow :—

“ Of K. B.

East. 1 W. IV., time for pleading by prisoners, 2 B. & Ad. 446.

Mich. 3 W. IV., issuing, signing, and sealing writs, 4 B. & Ad. 8.

Trin. 7 W. IV., office hours, 7 A. & E. 184.  
fees upon writs filed in vacation, and for searching for copies thereof, 7 A. & E. 288.

“ Of C. P.

East. 1 W. IV., fees for entering declaration, 7 Bing. 555.

Mich. 1 W. IV., termage fees payable by attorney, 1 Bing. N. C. 411.

Mich. 4 W. IV., acknowledgments by married women, 3 M. & Sc. 871.

Mich. 7, as to custody of records, not reported.

Trin. 7 W. IV., office hours, 3 Bing. N. C. 977.

Trin. 6 V., proceedings upon acknowledging satisfaction of judgments, extended to all the courts by R. G., East. 7 V.

“ Of Exch.

Mich. 1 W. IV., fees of sworn and side clerks, 1 C. & J. 276.

duties of sworn and side clerks, 1 C. & J. 272.  
the master, 272.

office hours, 272.  
appointment of attorneys, 272.

Hil. 1 W. IV., removal of causes from Wales, &c., 1 C. & J. 282.

justification of bail at chambers, 1 C. & J. 385.

Trin. 1 W. IV., motion for concilium, &c., 1 C. & J. 468.

arrest upon writs of attachment, *id.* 468.

Mich. 2 W. IV., office hours, 2 C. & J. 1.”

All the rules and regulations included in this collection will be found in order of date in the *Legal Observer*, which many of our readers will recollect was commenced at the time the great modern law reforms were projected.

*A Manual for Articled Clerks; or, Guide to their Examination and Admission.* Fourth edition, revised, with great additions. London: E. Spettigue.

THE demand for a fourth edition of this work is sufficient evidence of its utility. We are constantly receiving letters con-

taining inquiries relating to the examination and admission of attorneys and solicitors. In this little volume will be found very full instructions to the candidates, not only in the proper and most judicious method of pursuing their studies, and preparing for the ordeal of examination, but in the steps to be taken, and the forms to be used in coming before the examiners and obtaining their admission in the several courts of law and equity.

The work has been compiled from sources that may be fully relied on, and we recommend it as a very useful "Hand-book" to the law student. It points out the proper course of study in all the principal branches of the law: conveyancing, equity, bankruptcy, common law, and criminal law; and in doing this, attention has been duly paid, not only to those who are able to devote ample time to their legal education, but to such as, from limited means and opportunities, are compelled to adopt a short course of study.

The work includes so much of the statute 6 & 7 Vict. c. 73, as relates to articulated clerks, with the new rules and regulations for conducting the examination, and notes showing their practical effect. It comprises also a large collection of questions with references to works of authority in which answers may be found. The editors have used their best exertions to render the work worthy of the continued approbation of that part of the profession for which it is designed.

## NEW BILLS IN PARLIAMENT.

### CITY OF LONDON TRADE.

This is a bill brought in by Lord Brougham, for enabling all persons to trade and work within the City of London.

It recites, that in the City of London, as well as in other cities, towns, and boroughs, a certain custom hath prevailed, and certain bye laws have been made, that no person, not being free of such city, and of such other cities, towns, and boroughs, or of certain liverys, guilds, mysteries, or trading companies within the same, or some or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandize, by way of retail or otherwise, or use any or certain trades, occupations, mysteries, or handicrafts, for hire, gain, or sale, within the same city, or other cities, towns, or boroughs:

That by law all such disqualifications, exclusions, and incapacities to deal or trade, or work and labour, have now for some time ceased and determined in all other cities, towns,

and boroughs: That it is expedient that the same should now from henceforward likewise cease and determine within the city of London: It is therefore proposed to enact,

That every person may, within the City of London, keep any shop for the sale of all lawful wares or merchandizes, by wholesale or retail, and use any lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within the said City of London, any law, custom, bye law, or usage to the contrary in anywise notwithstanding.

### BASTARD CHILDREN.

Lord Radnor has introduced a bill to repeal so much of an act passed in the last session of parliament as relates to the affiliation and sustentation of bastard children. It recites, that the 7 & 8 Vict. c. 101, contains divers clauses relative to the affiliation and sustentation of bastard children, which have been found inconvenient and mischievous in practice, and ought to be repealed: It is therefore proposed to enact,

1. That from and after the passing of this act all the clauses contained in the said act passed in the last session of parliament, intituled "An Act for the further Amendment of the Laws relating to the Poor of England," having reference to the affiliation and sustentation of bastard children, shall be and the same are hereby repealed, except so far as the same shall repeal any other act, or any part of any other act.

2. And reciting that it appears from both experience and reason that no legal provisions are calculated or able to correct vice and reform morals, and that the surest safeguard of the purity of women, next to their natural modesty and innate love of virtue, and to the precepts of religion, is the fear of the degradation attendant on vicious courses, and anxiety about their offspring; be it enacted, That from and after the passing of this act no woman pregnant of a child about to be born a bastard, and no mother of a bastard child, shall have any legal claim against the father of such child, or for the payment of any money in aid of or for the support of the same: Provided always, that nothing herein contained shall invalidate or set aside any orders of affiliation made before the passing of this act, or in any way exempt the persons on whom such orders may be or may have been made, from any payment under the same, but all such orders, and all proceedings consequent thereon, and necessary for the enforcing of the same, shall be good and valid, and of the same force and effect as if this act had not been passed: Provided also, that proceedings commenced in pursuance of the said act before the passing of this act shall be valid, and of the same force and effect as if this act had not been passed, and may be prosecuted according to the provisions of the said act, or of any other act passed or to be passed in this present session of parliament for giving effect to the same, in the same manner as if this act

had not been passed, and anything herein contained to the contrary notwithstanding.

3. That all bastard children born after the passing of this act shall be considered as part of the family of the mother of the same, and that the mother of such bastard child or children, and the father and mother of the said mother, shall be liable to support or to contribute to the support of the said child or children, in the same manner as the father and mother, grandfather and grandmother, of legitimate children are now liable by law with regard to their legitimate child or children, grandchild or grandchildren.

## CHANGES IN THE LAW IN THE PRESENT SESSION OF PARLIAMENT.

### ASSIMILATING STAMP DUTIES. 8 VICT. C. 2.

An act to continue for three years the Stamp Duties granted by an act of the fifth and sixth years of her present Majesty to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the 10th day of October 1845. [18th March 1845.]

*Duties continued for three years.*—1. Whereas by an act passed in the 5 & 6 Vict. c. 82, intituled "An act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the 10th day of October 1845," certain rates and duties denominated stamp duties were granted to your Majesty for a term therein limited, which will expire on the 10th October 1845: We, your Majesty's most dutiful and loyal subjects, the Commons of the united kingdom of Great Britain and Ireland, in parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses, have freely and voluntarily resolved to continue the said rates and duties, and to grant the same to your Majesty for the period hereinafter mentioned; and do most humbly beseech your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all the several sums of money, and duties, and composition of duties, granted by the said recited act, and not repealed by any subsequent act, and also all duties now payable in lieu or instead of any of the said duties which may have been so repealed, shall be and the same are hereby continued, and shall be charged, raised, levied, collected, and paid, unto and for the use of her Majesty, her heirs and successors, for the term of three years, to commence on and to be computed from the 10th October 1845.

*Acts continued in force.*—2. And be it enacted, That the said recited act, and all and every other act and acts now in force in relation

to the duties granted by the said recited act, shall severally be continued and remain in full force, and be of the like effect in all respects, in relation to the duties hereby continued and granted, as if the said duties had been originally granted by the said recited act for a period which did not expire before the end of the term for which the same are continued and granted by this act; and all and every the powers and authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things, contained in the said acts or any of them, and in force as aforesaid, shall severally and respectively be duly observed, practised, applied, and put in execution in relation to the said duties hereby continued and granted, as well during the term herein limited as after the expiration thereof, for the charging, raising, levying, paying, accounting for, and securing of the said duties, and all arrears thereof, and for the preventing, detecting, and punishing of all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in the body of this act with reference to the said duties hereby granted.

*Act may be amended this session.*—3. And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of parliament.

## OBJECTIONS TO THE JUSTICES' CLERKS BILL.

### REASONS AGAINST PROHIBITING CLERKS FROM ACTING PROFESSIONALLY IN CERTAIN CASES.

THIS bill, which will be found in our number for the 8th March, contains in the 12th section an enactment, that no clerk, during the continuance of his office, or within six calendar months after his resignation or removal, shall be concerned, by himself or partner, directly or indirectly, as an attorney or agent in any matter brought before, or in any prosecution arising out of or consequent upon any proceeding before the justices whose clerk he is.

This provision, which is contrary to the government bill of the last session, has naturally excited the opposition of the magistrate's clerks, who have stated the following objections to it:—

It is based upon the unfounded assumption that clerks are disposed to abuse their trust.

No general grievance can be adduced to justify this stigma upon a respectable class of public functionaries.



It substitutes the mean apprehension of a penalty for the influence of an honourable feeling of duty.

As the clerk can only advise, not act, and the magistrates can dismiss him at any moment without cause assigned, it conveys an imputation upon the magistrates that they will connive at their clerk's misconduct.

It will prohibit the public from employing as an attorney, in many cases, the nearest and perhaps most efficient legal practitioner.

Or it will deprive the magistrates and the public of the services, in the office of justices' clerk, of persons of high standing in the profession and best qualified for the situation.

Or it will entail upon the county-rate a heavy burthen for adequate salaries to compensate the clerks for the abstraction of so much professional business.

The restriction, as to being concerned in proceedings before magistrates, would nearly put an end to a professional man's business altogether, there being scarcely any business not liable in some stage to be brought before the local magistrates.

The clause, as worded, would admit of a justices' clerk acting for prisoners whose commitment he is presumed to have advised, although it would prevent his furthering the ends of justice in the conduct of the prosecution.

It would prohibit any preliminary interference with respect to proceedings for recovery of tithes, church and poor-rates, examinations as to settlement, vagrants, parochial assessments, highways, &c. &c., and disqualify for the justices' clerkship clerks to boards of guardians.

It would prevent justices' clerks from acting as solicitors for associations for the prosecution of felons.

The restriction as to any prosecution at sessions or assizes, is still more objectionable. Is its sole object to prevent clerks, by the fear of a pecuniary penalty, from advising the commitment of innocent persons for the chance of conducting the consequent proceedings?

Justices' clerks are best qualified to conduct prosecutions in matters in which they have as clerks conducted the preliminary inquiries, not only from their experience in criminal law and general local knowledge, but from having sifted the evidence and observed the demeanour of the witnesses.

The justices' clerk's zeal will be diminished by the knowledge that the skill employed in getting up the case will be attributed to the solicitor employed in the prosecution.

The justices' clerk may be the regular and confidential adviser of the neighbouring nobility, gentry, and farmers, who would be deprived of his services in prosecutions.

He can conduct prosecutions at less cost, from having usually many cases to conduct.

He is often, as clerk to the justices, obliged to attend the sessions and assizes to prove confessions, so that if not employed in prosecutions his attendance would entail an additional charge on the county-rates.

The prohibition would also prevent justices'

clerks from supporting and defending orders of removal, indictments as to highways, convictions, and other proceedings of their justices, although the licensing and other statutes provide for payment of costs to magistrates in supporting their convictions.

The prohibition will only bind those already bound by a sense of propriety; but the unscrupulous will find easy means of evading the penalty by an arrangement with some other clerk or attorney.

It will prevent the clerk acquiring that practical acquaintance with the rules and practice of the higher criminal courts and of quarter sessions, which the complicated and ever-varying state of the law renders necessary to enable him to advise magistrates aright, and protect them from actions for technical irregularities.

Country clerks are differently placed to police clerks, who act under legally-educated magistrates, and whose jurisdiction does not embrace parochial assessments appeals, orders of removal, bastardy cases, game, labourers' wages, and other cases of difficulty.

It is in direct opposition to the 9th section of the government bill of last year, which was founded on the report of two commissions, one as to county rates, and the other as to the criminal law.

We would also call the attention of our readers to the 6th clause of the bill, which provides that the persons qualified to fill the office of justices' clerk shall be—either attorneys of one of the superior courts of common law at Westminster, or persons who shall have been articled for at least 5 years to a clerk of the peace or a clerk to the justices of a division; except persons usually acting as clerk to the justices before the passing of this act, and certified by the justices to be sufficiently qualified by experience and knowledge to perform the duties.

In the former bill it was required that the clerks should be attorneys of 5 years' standing. We think the articulated clerk should be examined and admitted, and in fact that the office should be confined to admitted attorneys.

## SELECTIONS FROM CORRESPONDENCE.

### EXAMINATION PRIZES.

SIR,—Having been for some years a constant reader of your valuable publication, I have with pleasure noticed an evident desire on your part to promote, by discussion in your pages, the different interests of your numerous readers. Such being the case, I trust to find a place in them by which to call the attention of those whom it may concern to the fact, that

though often mooted, nothing has as yet been determined upon, with respect to awarding prizes at the legal examinations, or any actual steps taken to secure that object. I am aware that there are still some opponents to this measure, but I have yet to be convinced that any of the arguments they have brought forward are well founded, and I cannot understand why a system which is universally adopted in the other professions, should be denied to one, the students of which more than those of any other, need some hope of distinction, or other stimulative inducement, to cheer them on their dreary journey through the intricate mazes of the law.

Our profession has long been noted for its supineness, and a reluctance to admit of any deviation from the beaten path. I earnestly exhort the rising generation of attorneys to shake off this lethargy of their forefathers, convinced that in this instance a beginning only is wanted, and which, if fitly made, will ensure success.

By the rules regulating the examinations, the examiners are, I presume, the parties through whom any alteration therein must be effected: I would therefore suggest that they should be respectfully requested to take the matter into consideration; and having done so, at once declare whether, in their opinion, granting distinctions to some few of the candidates would have the beneficial effect its advocates imagine, and if so, arrange the manner in which the plan may be best carried out; if, on the contrary, it should appear to them better for the examinations to be continued in their present shape, their determination so to continue them would, I should hope, set the matter finally at rest.

P. W. D.

#### SHARE-BROKERS PREPARING TRANSFERS.

The latter end of January I submitted to you, under the signature of "An Old Subscriber," a question as to the legality of share-brokers preparing and getting executed, the transfer of railway stock, which appeared in the *Legal Observer* on the 1st of February, p. 263. I have with some impatience referred to the subsequent numbers, and have not yet seen any answer, or indeed notice taken of the subject, as I hoped the importance of it to the profession would have elicited. You will excuse me calling this to your attention. I trust there may exist, or hereafter be provided, some remedy to prevent the interference of non-professional men encroaching on the practice of the attorney, whose business has already had too many inroads made upon it.

AN OLD SUBSCRIBER.

#### HOUSE OF LORDS' REPORTS.

##### EVIDENCE.—FOREIGN LAW.

THE recently published number of Messrs.

Clark and Finnelly's Reports of appeal cases in the House of Lords, contains a very considerable amount of useful and interesting matter. We shall direct attention in the first place to the Sussex Peerage case, in which sundry points of great consequence to the law of evidence were resolved and determined. Our readers will remember, that the petition addressed to her Majesty by Colonel D'Este, the son of the late Duke of Sussex, claiming the peerage dignities of his father, came before the Lord's committee for privileges, upon a reference from the crown, in the late session of parliament. The question was, whether the marriage of his Royal Highness with the Lady Augusta Murray had been valid, regard being had to the provisions of the Royal Marriage Act, the 12 Geo. 3, c. 11, whereby it is provided that no descendant of George II. shall be capable of contracting matrimony without the previous consent of the crown, and that any marriage had without such consent shall be void. We do not mean to discuss the great constitutional question involved in this statute—but after giving shortly the substance of the controversy raised by the claimant, and the determination thereof by the committee, we shall proceed to consider the legal points incidentally decided.

The main fact appeared to be, that the marriage of the duke was solemnised at Rome, in the year 1793, by the Rev. Mr. Gunn, a regularly ordained clergyman of the Church of England; the ceremony being duly consummated according to the rubric of that church in all respects. It was therefore contended to be valid, as being in conformity with the provisions of Lord Hardwick's General Marriage Act, the 26 Geo. 2, c. 33; and although the Royal Marriage Act would no doubt have affected it if celebrated in England, or in any of the territories of the British empire; the question was, whether the statute annulled it wherever it might be contracted, whether within the realm or without; upon this question of law the twelve judges were required to deliver their advice to the committee; and having taken time to consider it, they came ultimately to be of opinion, and advised their lordships that the prohibitory words of the act were general,—“that no one of the persons therein described should be capable of contracting matrimony.” This they held was a general abstract prohibition; constituting an incapacity in the duke, which he carried with him wherever he went, and which was consequently as operative at Rome as in England. The marriage, therefore, was bad. The committee for privileges agreed unanimously in this view of the matter, and it was therefore resolved that the claimant had not made out his claim. This resolution was by the committee reported to the house, and by the house was adopted and affirmed; and, as the use is in such cases, was reported in due form to the Queen as the fountain of honour.

Now, in the argument upon the bearing of this case, several points arose, the decision of which ought to be made known to the practitioner, and as the reports of Messrs. Clark

and Finnely are not in every hand, we think a *precis* of these adjudications will prove not unacceptable to the profession. And here let us observe, that the proceedings upon peerage cases, are in their nature strictly *judicial*. So that the determinations of the committee for privileges, especially when, as in the present instance, they are confirmed by the house, have the same authority as if originally pronounced by the house itself, sitting avowedly in the exercise of its pre-eminent judicial functions.

The first question was, whether the marriage was good by the law of Rome—and from the argument of Sir Thomas Wilde on behalf of the claimant, it would appear at the outset to have been the opinion of that learned person, that the law of Rome did not recognize any marriage not celebrated according to the Roman Catholic ritual. On that assumption he seems to have been driven to admit that the duke's marriage with Lady Augusta Murray would have been held invalid at Rome, inasmuch as it was solemnized according to the English ritual. But upon going into evidence, a witness was produced by the claimant, to prove the law of Rome on this point. That witness was the learned and well-known Dr. Wiseman, who stated himself to be a Roman Catholic bishop, and coadjutor to the bishop who is vicar-apostolic to the central district of England at present. His evidence was objected to by the Attorney-General, on the ground that he was not a professional lawyer; nor had he any peculiar means of legal knowledge to render his testimony admissible in the character of a skilled witness, competent to prove foreign law as matter of fact. This objection being formally taken, it became necessary to *qualify* the witness before receiving evidence from him. In his examination he said, "I have had no personal experience of the administration of the law at Rome. I have studied the canon law. I have not gone through a regular course of canon law, but for the discharge of my duties it has been necessary that I should make myself acquainted with the canon law upon all points upon which it is applicable to matrimonial cases, so as to form my own opinion upon the subject. I have gone through the studies usual for ecclesiastics, but not for ecclesiastical lawyers. I have not gone through such a course of study as would qualify me to be a judge in the ecclesiastical tribunals. I have no means of knowing the law upon this subject more than any other learned catholic ecclesiastic. I have been appointed an ecclesiastical judge in this country by the court at Rome, as any other bishop or vicar-general might be. All that relates to matrimonial cases would come of course before me in my present office, and I should dispose of them by the canon law of Rome. I govern myself by that law in my decisions. I should be obliged to decide upon the law of Rome, or of other catholic countries, in the case of catholics marrying protestants who come within my jurisdiction. It would be

my duty to decide with respect to them. My decision would be of authority till reversed. I have, during my residence in England, frequently exercised this jurisdiction. I have authority to determine whether a marriage between two catholics is or is not valid. The tribunals at Rome would respect my decisions, and act upon them. My jurisdiction is entirely confined to spiritual censures, and to consequences of an ecclesiastical character; not affecting property or civil rights." At the conclusion of the examination, the Lord Chancellor, (expressing the opinion of the committee,) said, "The witness comes within the description of a person *peritus virtute officii*." The result, therefore, was, that bishop Wiseman was held learned by virtue of his office; and he was admitted accordingly to prove the law of Rome on the point in hand, as a scientific witness. So that according to his decision, it is not always necessary that a man called as a witness to prove foreign law shall have been educated in the legal profession. The Attorney or Solicitor-General for a colony, (a case put by one of the law lords), shall, by virtue of his office, be held competent to prove the law of that colony; although he perhaps never studied the law, or turned his mind to it in any way until he received his official appointment. But, on the other hand, mere learning or intelligence exhibited by the witness will not be sufficient. He must, we apprehend, either belong to the legal profession, or have such an appointment as may justify the court in holding that he is *peritus virtute officii*."

The bishop having in this way been admitted as a competent witness, he proved that by the law of Rome the marriage of the Duke and Lady Augusta Murray was valid.

Another point arose upon Dr. Wiseman's examination, which was, whether, to refresh his memory or to correct or confirm his opinion, he might refer to foreign law authorities. The decision of the committee was thus expressed

\* *Regina v. Dent*, 1 Car. & Kir. 97. In this case Mr. Justice Wightman, at *nisi prius*, held it not essential that a witness called to prove foreign law should be at all connected with the legal profession. Accordingly, the law of Scotland as to marriage was stated by one whose *causa scientie* consisted of no more than this, namely, that he was born and educated in Scotland, and had resided there till he was twenty years old. Upon this foundation he asserted himself to be acquainted with the law of Scotland; and the learned judge admitted his evidence, with the entire approbation of the counsel on both sides.

We must observe that this case having been cited as an authority for examining Bishop Wiseman, the Lord Chancellor said, "I ought to say at once that it is the universal opinion both of the judges and the lords that the case represented to have been decided by Mr. Justice Wightman is not law."

by the Lord Chancellor: "The witness may correct and confirm his recollection of the law, though he is the person to tell us what it is." A skilful and scientific man, therefore, in proving a foreign law, may refer to books to assist him in his evidence.<sup>b</sup>

We shall resume the consideration of this part of Messrs. Clark and Finnelly's Reports in a future number.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

#### CAVEAT AGAINST A CHARTER.—MODE OF PROCEEDING.<sup>a</sup>

*On a caveat entered against a patent for an invention, it is the usual course for the proposed patentee to present a petition to the Lord Chancellor to discharge the caveat and affix the great seal. Where a caveat was entered against a charter of incorporation, it was held to be a more convenient course to proceed by petition than by motion.*

Mr. Russell. — There is a matter which much presses, and in which the public convenience is concerned, and by which the execution of the duties imposed by the act of 6 & 7 Vict. c. 73, on the Law Society, is suspended. In consequence of a caveat which has been entered against putting the great seal to a new charter, which has been approved of and completed up to the point of affixing the great seal, the functions of the corporation are suspended. We have given notice to the other side that we should mention it, and I have to ask your lordship's permission that we may now be allowed to bring on that caveat.

Mr. J. Parker. — I appear for Mr. Ripley, who has entered the caveat, and I apprehend the only regular manner of bringing the matter under your lordship's eye is by a petition presented by the parties seeking for the patent, stating the case which they consider entitles them to the patent, and that would bring the matter regularly under your judgment. I have looked into the cases in which caveats have been entered to stay proceedings on a patent, and I have not been able to find any where the thing has been opposed, in which the regular course was not to bring it under the notice of the great seal by petition. In the matter of *O'Reilly*, before Lord Thurlow, (1 Ves. Jun. 112,) which was an application for

a patent stopped by caveat, a petition had been presented. In all cases in which a party opposing a patent has entered a caveat, as far as I have been able to find, the parties soliciting the patent have presented a petition to have that caveat withdrawn; and that is the regular way in which the matter has been brought under the consideration of the court.

Mr. Russell. — In the case of a patent, the party applying for it applies for a privilege which is to affect the rights of the rest of her Majesty's subjects,—it is to acquire a benefit to himself at the expense of others; but that has no application to the case of a charter.

The Lord Chancellor. — A charter comes before me in the ordinary course, after it has been approved of by the Attorney and Solicitor-General. I look at the charter, and see whether it is proper that the charter should be granted.

Mr. Russell. — And more than that, my lord, it must bear the sign manual.

The Lord Chancellor. — It must go through all the regular stages, of course. Before I affix the great seal, I consider the charter and examine it, and see whether there is any objection to it. If anybody can point out any objection, it does not pass the great seal. It is not necessary that there should be a petition to me praying me to put the great seal to it—that is quite out of the course.

Mr. J. Parker. — This is a case involving matter of considerable importance as to private right.

The Lord Chancellor. — It ought to be put in such a shape that it may be deliberately considered.

Mr. Russell. — It is at this moment in such a shape. We gave them notice five days ago, and our affidavits were all filed then.

The Lord Chancellor. — I do not know of any instance of a caveat being lodged against a charter. Anybody may give information to me that it is not proper to pass the charter on any reasons they may allege.

Mr. J. Parker. — I should submit to your lordship that one side or the other must have some *constat* before your lordship, raising some issue. The case of *O'Reilly* was not a patent for an invention, but a patent to the patentee of a theatre. These letters patent involve many very important matters of private right, no less a question than this, whether it is competent for the majority of the body to disregard the constitution of the old charter.

Mr. Russell. — No question of that sort at all arises. Looking into the state of the thing as it appears from the dates, it appears from the privy seal that the old charter was surrendered on the 22nd of February, and that the surrender was enrolled on the 24th of February, so that there is a complete end of the old charter: and it is utterly impossible that that can be undone. Then on the 26th of February this gentleman who had assented, under his own hand, to all the steps that were taken, entered a caveat.

<sup>b</sup> See also Baron de Bode's case in the Queen's Bench, 20th June, 1844, not yet reported.

<sup>a</sup> This report has been taken from the shorthand writer's notes.

**The Lord Chancellor.**—That I know nothing about.

**Mr. Russell.**—It will appear by the affidavits, my lord; but your lordship has this fact before you, that all the preceding steps have been regularly taken.

**The Lord Chancellor.**—At present I am to take it that the old charter has been properly surrendered, and the sole question is as to the granting of a new charter, and whether that charter is of such a nature as that I ought to let it pass the great seal.

**Mr. Russell.**—That is the sole question; and I apprehend that no party can appear here for any private interest; we must take it on the existing state of the thing. If anybody can show it will not be conducive to the public interest, that there is any ground of expediency, notwithstanding that the crown has approved of it, and the proceedings have been conducted regularly up to its last stage without any person suggesting them to be improper,—at the last moment, when it is before the great seal, anybody may come and show your lordship that the charter should not be granted, and the public interest requires that the great seal should not be put to the charter, but they can do nothing more.

**Mr. J. Parker.**—This took place in the present case. Two of the members of the society, knowing of the intention to surrender the old charter, file a bill in this court, and obtain an injunction, on the ground of their private right to restrain the body from surrendering the charter.

**The Lord Chancellor.**—Well, what was the result of that?

**Mr. J. Parker.**—The result of that was, that it tied the hands of my friend Mr. Russell's clients; but those two plaintiffs, who I say stood precisely in the same situation as Mr. Ripley, withdrew the injunction at the eleventh hour, and allowed the patent to pass without giving the opportunity to Mr. Ripley to interpose.

**Mr. Russell.**—I have Mr. Ripley's assent, in his own hand-writing.

**Mr. J. Parker.**—Mr. Ripley says that a certain definite share of the property of this institution belongs to him; before they surrender the old charter, they assign that property to trustees, who now hold it in trust to reconvey it to the body when the new charter is granted; if that is done it will be destructive of his interest, as at this moment Mr. Ripley has rights of property in that property which is held by these trustees; the instant the charter is granted, the property will be reconveyed, and his right of property will be destroyed.

**Mr. Russell.**—We have nothing to do with that on the present occasion. If these trustees hold any property in which Mr. Ripley has an interest, they will be answerable to him; the charter does not affect the liability of the trustees.

**Mr. J. Parker.**—I think your lordship will see the inconvenience of discussing this now. In patents for inventions and patents for li-

censes to theatres the patentee presents his petition.

**The Lord Chancellor.**—In the special jurisdiction I have to exercise, for instance, in the case of a visitor,—when I act as visitor for the crown, it comes before me always in the shape of a petition.

**Mr. Russell.**—Because there is no other mode of bringing the facts before the court. That charter is now before your lordship for consideration; some person comes in and suggests that the great seal ought not to be put to it by caveat.

**The Lord Chancellor.**—There was a former charter, that charter has been surrendered, and the surrender has been enrolled, and on that you apply for a new charter, and a caveat has been entered on some grounds which I do not at present enter into. Those are facts to be brought before the court. I think you had better bring them before the court on petition.

**Mr. Russell.**—If your lordship thinks a petition is the more convenient course.

**The Lord Chancellor.**—I think that will be the more convenient course.

It was then arranged that the case should be heard on petition on an early day.

*In the matter of a caveat against a charter to the Society of Attorneys, 5th March, 1845.*

[The caveat was withdrawn before the hearing, and the charter passed the great seal on the 14th March.]

#### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

SOLICITOR AND CLIENT. — TAXATION OF COSTS.—CONSTRUCTION OF 6 & 7 VICT. c. 73.

*An order of course may be obtained for taxing a solicitor's bill, although more than a month may have elapsed since its delivery, provided it have not been paid.*

THIS was a petition to set aside an order of course which had been obtained to tax certain bills of costs of the petitioner, for irregularity. The petition stated that the petitioner had been employed by the respondent in the completion of various sales by auction of property, which had been sold in lots, for upwards of 30,000*l.*; that the titles to several of the lots were very complicated; that before the sales were all completed the respondent repeatedly applied to the petitioner for an account of his costs in relation thereto, and that he caused a bill containing a portion of such costs to be made out previously to the sales being completed, and subsequently another bill containing another portion; but that in consequence of the urgent applications of the respondent, the bills were made out in great haste, and upon reference to the drafts of them since the same were made out, the petitioner had discovered many errors and omissions which would occasion consider-

able loss to him if the bills should be taxed without such errors being corrected and supplied. The petition also stated that the petitioner had been for several years past the confidential adviser and solicitor of the respondent and his family, who had previously paid several of his bills without objection, and that he had in several instances reduced the charges, in the bills now sought to be taxed, below the amounts which he would have been entitled to charge, in the full expectation that such bills would be settled without taxation, particularly as the respondent had always expressed himself highly satisfied with the conduct of the petitioner in the management and completion of the sales. The petition then stated that on the 21st of February, 1845, the petitioner was served with an order, which had been obtained as of course, dated the 19th of that month, for the taxation of the petitioner's bills, in which it was stated that such bills were delivered in the months of October and December last. The bills amounted to 1957l. 12s. 10d.

Mr. Miller, in support of the petition, referred to the 38th section of the act under which the order had been obtained, by which it was enacted, that in case application should not be made for taxing a bill within a month after its delivery, it should be lawful for such reference to be made, either upon the application of the solicitor or of the party chargeable, with such directions and subject to such conditions as the court or judge making such reference should think proper, and contended that an order could not be obtained for taxation of a bill of costs after the expiration of a month from the delivery of the bill, without a special application. He also cited *In re Becke and Flower*, 5 Beav. 406.

The Master of the Rolls said he had settled a general form of order applicable to cases where taxation was applied for after the expiration of a month, and the bill had not been paid, and that the order made in this case was in the form so settled.

Mr. Miller submitted that this was a case requiring special directions and conditions applicable to the particular circumstances, which could not be provided for by any general order, and that the order sought to be discharged did not contain any special direction or condition.

The Master of the Rolls said, that the order provided that the Master's report was to be procured within a month, (unless the Master should certify that further time was necessary to enable him to make his report,) or that the order should be of no effect—which was a special direction. His lordship said he must therefore dismiss this petition; but the petitioner might present another petition setting forth the alterations and additions he wished to make in the bills which had been delivered, and if there appeared to be just grounds for making them, the court would allow them to be made.

*Re Gaitkell*, March 18th, 1845.\*

[\* It is highly important to the profession

Vice-Chancellor ~~Stagnum~~.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

24TH ORDER OF AUGUST 1841.—AFFIDAVIT OF SERVICE.—PRACTICE.—HUSBAND AND WIFE.

*An affidavit stating that a copy of the bill had been served upon the husband and wife, by serving the copy upon the husband in the presence of the latter at the husband's dwelling house: Held sufficient, upon a motion under the 24th order of 1841.*

Mr. Heathfield moved for leave to enter the usual memorandum of service of a copy of a bill, under the 23rd and 24th order of August 1841, upon the defendants being husband and wife, the subject matter of the suit not relating to the wife's separate estate. The statement in the affidavit was "that the witness had personally served the husband and wife with a true copy of the bill, by personally delivering the same to, and leaving it with the husband, in the presence of his wife, at his dwelling house." *Parsons v. Steel*, 13 Law Jour., N. S., 389; *Kent v. Jacobs*, 5 Beav. 48.

His Honour made the order.

*Bailey v. Threlfall*. March 4, 1845.

Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

PROCEEDINGS AT QUARTER SESSIONS VITIATED, WHERE MAGISTRATES TAKE PART IN THE DISCUSSION.

*A court is improperly constituted where any of the members interested in the decision, take part in the proceedings.*

*Where, on an appeal to the quarter sessions against an order made by two magistrates,*

that the general order referred to in the above case should be generally known, for any one reading the words of the act might be induced to believe that the proviso for not making an order for taxation after the expiration of a month from the time of a bill being delivered, without special directions or conditions, had been inserted for the protection of solicitors, so as to give them the opportunity of suggesting such directions and conditions as might meet the justice of each particular case; and it is submitted, with great deference, that if any general orders are to be made under the act, they should be issued by all the courts appointed to carry the act into execution; for we are informed a different rule has been laid down at law with reference to applications of the above description. Since writing the above, we have been informed that the decision in *Re Gaitkell*, is likely to become the subject of appeal.—ED.]

under the 4 & 5 Vict. c. 59, s. 1, for payment by a parish surveyor of a sum of money to the commissioners of a turnpike trust, the sessions confirmed the order; and it appeared that one of the magistrates on the bench was a mortgagee of the turnpike tolls, and that another was one of the magistrates who made the order, and therefore a respondent in the appeal, but who left the court before the case was decided; this court quashed the order of sessions.

A RULE nisi had been obtained, calling upon the defendants to show cause why a *certiorari* should not issue, to bring up an order made by magistrates at quarter sessions. It appeared by affidavit, that an order had been made under the hands and seals of two magistrates of the county of Hertford, (the Rev. H. Morris, clerk, and J. G. Fordham, Esq.,) directing a sum of money to be paid by the surveyor of highways for the parish of Bygrave in that county, to the commissioners of the Baldock and Bournbridge turnpike trust or their treasurer, under the 4 & 5 Vict. c. 59, s. 1. An appeal was entered against this order, which came on to be tried at the Hertfordshire spring sessions before the deputy chairman, when the chairman, (the Marquis of Salisbury,) declined to try the appeal, it being suggested that he was a large landowner in the parish. At the time of the appeal, two magistrates, J. G. Fordham and R. Fitzjohn, Esqs., were present on the bench. Mr. Fordham was a respondent, being one of the magistrates by whom the order was made; and it was alleged that he was seen during the trial in conversation with other magistrates on the bench, and it was believed from his manner that he was consulting with them on the subject of the appeal. Mr. Fordham stated in his affidavit that he left the court before the appeal was concluded, and that he did not take any part in the determination of the court thereon. Mr. Fitzjohn was at the time a creditor of the Baldock and Bournbridge turnpike trust, and money was owing to him on the security of those tolls; but he alleged in his affidavit that he took no active part in the merits of the appeal; that he gave a vote as a magistrate, as he conceived he had a right to do; and that after the hearing, when the court retired to consider their judgment, he voted in favour of confirming the order, and that out of ten magistrates who retired, all except two gave similar votes.

Mr. Wordsworth showed cause.

An objection is taken to the decision of the magistrates at quarter sessions, on the ground that the court was improperly constituted, because two magistrates had taken part in the proceedings who were interested in the subject-matter of the appeal. The facts, as they appear on the affidavit, do not justify the court in drawing such an inference. A charge of this sort against magistrates ought to be clearly made out and not left to inference. The nature of the conversation is mere matter of surmise, and therefore not sufficient to call on a magistrate to explain his conduct. In *Reg. v. The*

*Cheltenham Commissioners*,\* it was held that a court was improperly constituted where the sessions had decided by a majority of eleven against eight, three of the majority being interested; but Mr. Justice Patteson then said,—“I must guard myself, however, by stating that I am not at present prepared to say that, in a case where one magistrate is interested, and fifty others are not, the proceedings will necessarily be invalid: I cannot go that length. The magistrate interested may not recollect his interest.” In the present case the court was properly constituted. One magistrate left the court before the appeal was decided, and the other, although he voted, had an interest too remote to disentitle him from taking part in the decision.

Mr. Hawkins was not heard in support of the rule.

Lord Denman, C. J.—In these cases there has been a rule to bring up an order of the court of quarter sessions, and I am very clearly of opinion that this must be brought up for the purposes of being quashed. I think that both the gentlemen, whose names have been brought before us, were disqualified from taking part in the decision of the matter under the consideration of the court of quarter sessions. I think that Mr. Fitzjohn was disqualified in consequence of being one of the creditors on the turnpike trust, for payment of certain monies secured to him by mortgage on that trust. I am clearly of opinion, with all proper deference to the opinion alleged to have been expressed by my brother Patteson, in the case of *Reg. v. The Cheltenham Commissioners*,<sup>b</sup> that one party taking part in a discussion in a court of justice, who at the time has an interest in the decision, being in one way or the other to be affected by that decision, is a circumstance that of itself vitiates the whole proceeding. I do not enter into any analysis of motives occurring on such an occasion; and it is enough for me to say, that the party interested in the judgment took part in the discussion, in order for me to declare that in my opinion such judgment cannot stand. It is clear that Mr. Fordham was a party respondent in this appeal. He had made the order which was appealed against. He was a party supporting that order, and might become liable to costs, and he was a party to the order confirming that which was then brought into question. The circumstances of his alleged interference in the discussion are quite sufficient to call on him to state distinctly in what respect it can be said that he did not take part of the decision. Even supposing that he did not take part in the actual decision itself, still there is something in his conduct which we are sorry to see, for he is seen conversing with the other judges in a case in which he was a party. It may be said that he did not believe himself to be in fact a party, but still this court is bound to be extremely jealous, that in no case whatever should an interested party take part in the judgment. The *primæ facie* case

\* 1 Q. B. R. 467.

<sup>b</sup> 1 *Ibid.* 477.

made here to show that he did so, is not answered by our being told that he left the court before the case was finally concluded, and that he did not actually take part in the final decision; for this is perfectly consistent with his having influenced by his presence and conversation, the justices who did actually make that decision.

Mr. Justice *Patteson*.—The case of *Reg. v. The Cheltenham Commissioners*,<sup>c</sup> has been cited to show that, when that case was before the court, I was of opinion that, unless a party interested formed part of the majority by which a case was decided, the fact of his interest formed no ground for impeaching that decision. In that case, I suppose I was not satisfied that the party interested had constituted one of the majority, and I seem to have formed my opinion on that ground. If I put it on the ground that the interference of the party interested did not extend to taking part in the actual decision, I put it on very unsound ground. Whether a court is properly constituted or not, does not depend on whether parties interested form part of the actual majority of the judges deciding the case. To say so would be to lay down a principle at once dangerous and unsound. When several persons constituting a court, discuss a matter before them, it is impossible to say what effect the argument of one person, whether he votes or not, may have on the other members of the court. The question really is, not whether he constituted one of the majority, but whether, being interested in the result, he took any part in the proceedings. In this particular case it seems, that one of the gentlemen was not a creditor at the time, but that he was one of the respondents in the appeal, and therefore, ought not to have taken any part in its decision; and when it is said that the only objection to his conduct on the bench is a mere surmise, and therefore, not sufficient to call on a magistrate to account for his conduct, the answer is, that here there is much more than surmise, for there is an affidavit, stating that in the course of the inquiry, and while this appeal was going on, one of the magistrates who made the order was in conversation with some of the other magistrates who formed the court, and were to decide on the validity of the order. It is true that no person heard what that conversation was, but it is a strong *prima facie* case, that if he talked with the magistrates while the matter was under discussion before them, he was talking with them on the subject which was then under discussion. If he was not in conversation with them on this subject, that should have been distinctly shown, for the fair inference is the other way. It is certainly true that the other magistrate, who was a mortgagee of the tolls, had but a remote interest in the matter, but still it was an interest; and though the act of parliament says that the money, which was the subject of the order of magistrates, was not to be carried to the general fund, but was to be applied to the general

repairs of the road; still, as the general fund would be liable to the repairs of the road, the smaller the amount of the demands made on that fund, the greater would be the benefit to the mortgagees.

Mr. Justice *Coleridge*.—I agree in the opinion expressed by Lord *Denman* and my brother *Patteson*, and for the reasons they have stated, and should not have added anything, but that I was not present when the case of *Reg. v. The Cheltenham Commissioners*<sup>d</sup> was decided. The question whether a court was perfectly constituted, is an *a priori* question, and does not depend on what was the result of the decision of the court. In this case one of the parties objected to the Marquis of Salisbury, who thereupon withdrew, a fact which shows that the magistrates themselves thought the objection to be rightly made at that time. As to what my brother *Patteson* said in the case already cited, he does not seem to me to have differed from the rest of the court; for though he guards himself from saying that the proceedings would be necessarily invalidated by a magistrate who may forget his interest, taking part in them, yet he afterwards seems to waive that point, for he says, "It is clear great effect may be produced by a party being present and merely joining in the discussion."

Mr. Justice *Wightman*.—I am entirely of the same opinion, it being the same that I expressed in *Reg. v. The Cheltenham Commissioners*; namely, that no court can be properly constituted where one of the judges interested in the subject matter in dispute forms part of it. We ought not to enter into any discussion as to the extent of interest possessed by the party, and consider whether it was sufficient to affect his own conduct or influence the opinion of others. It is enough that he is interested.

Rule absolute.

*The Queen v. The Justices of Hertfordshire.*  
Hilary Term, 1845.

#### Queen's Bench Practice Court.

[Reported by E. H. WOOLLEY ESQ., Barrister at Law.]

WRIT OF TRIAL.—NEW TRIAL, MOTION FOR.—AFFIDAVITS.

*On a motion for a new trial of a cause tried before the under-sheriff, at which counsel did not attend, the ground of the application being that the verdict is against evidence, it is not necessary to produce an affidavit stating the cause or nature of the application.*

*Cooper* had obtained a rule for a new trial of this cause, which had been tried before the under-sheriff of Dorsetshire, on the ground that the verdict was against evidence. No counsel attended the trial.

*F. Edwards* showed cause, and took a preliminary objection, viz., that the rule ought to



have been moved on an affidavit stating the grounds on which the application for the new trial was made, which was required in cases where counsel did not attend the trial, in addition to the affidavit verifying the sheriff's notes. He referred to the resolution of the judges reported in 4 Moore & Scott, announced by *Tindal, C. J.*, "that upon all motions respecting causes tried before sheriffs or judges of inferior courts of record, pursuant to the 3 & 4 W. 4, c. 42, s. 17-18, the party making the application to the court above must produce an examined copy of the notes of the sheriff or his deputy, &c., together with an affidavit verifying such to be a true copy; and also, in cases where no counsel has been retained to conduct the cause or defence in the court below, an affidavit setting forth the cause or nature of the application." [*Williams, J.*—The first part of the resolution has been acted on for many years. Where the grounds appear upon the the under-sheriff's notes, I cannot see the object of the second.] The court may possibly not be disposed to trust implicitly to the sheriff's notes. A material part of the evidence might be omitted in them. If an affidavit were made, it might be answered. The party should draw attention to the evidence he considers insufficient.

*Williams, J.*—The question is, whether or not there should be an affidavit to say, "I swear I am dissatisfied with the verdict, because it is against the evidence, and I move on that ground." It is very conceivable that when the ground intended to be relied upon is a something that does not appear upon the notes themselves, such as surprise, or a fact given in evidence and not reported, there might be a necessity for stating it in an affidavit, but where a party relies upon the notes of the under-sheriff alone, such an affidavit would give no information, and is unnecessary.

*F. Edwards* then addressed himself to the facts.

*Cooper, contra.*

Rule discharged.

*Kenning v. Acraman.* Q. B. P. C. Hilary Term, 1845.

### Exchequer.

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

#### CONTRACT IN RESTRAINT OF TRADE.

*The defendant covenanted not to carry on business as a perfumer within the cities of London and Westminster, or within 600 miles from the same: Held, that the contract was valid as to London and Westminster, though void as to other parts.*

**COVENANT** by the executor of J. Gosnell. The declaration stated, that by a certain indenture made between the defendant and J. Gosnell, since deceased; after reciting that the

defendant and Gosnell carried on business as perfumers in co-partnership, and that it had been agreed that the defendant in consideration of the sum of 2,100*l.*, should assign to Gosnell the defendant's moiety of the good-will, fixtures, leasehold, and stock in trade of the co-partnership. The defendant in consideration thereof did for himself, &c. covenant with Gosnell, his executors, &c., that he, the defendant, would not use, exercise, or carry on within the cities of London and Westminster, or within the distance of 600 miles from the same respectively, the trade or business of a perfumer, &c. or any other trade or business lately carried on by the defendant and Gosnell in co-partnership, and for the observance of this covenant the defendant did thereby bind himself to Gosnell, his executors, &c. in the sum of 5,000*l.*, as and by way of liquidated damages, and not as a penalty. Breach, that the defendant after the death of Gosnell carried on within the city of London, to wit, at No. 28, Lombard Street, in the said city, in the defendant's name and for his benefit, the trade and business of a perfumer, contrary to the covenant.

The defendant set out the deed on oyer, and pleaded that the cities of London and Westminster, and the said distance of 600 miles from the same, comprised the whole kingdom of England, the dominions of Wales, and the town of Berwick-upon-Tweed, together with a large portion of Scotland, and therefore the covenant was void.

*Martin*, in support of the demurrer and joinder, referred to *Chesman v. Naisby*, 2 Str. 739; and *Mallan v. May*, 11 M. & W. 653, as conclusive authorities that a contract in restraint of trade, though bad as to part, may be good as to the remainder. The court called on

*Cowling*, to support the plea. This case is distinguishable from *Mallan v. May*, for here all the stipulations form but one entire contract: that is evident from the sum mentioned as a penalty; 5,000*l.* being fixed as the value of the trade throughout the whole prohibited district. The parties would not have agreed upon so large a sum as the penalty for a breach of contract within a limited portion of the district. [*Parke, B.*—The stipulation is, that the defendant will not trade within London and Westminster, or within 600 miles from those places.] The contract is for a monopoly of trade throughout the whole of England. *Claygate v. Bachelor*, Owen, 145; *Mitchell v. Reynolds*, 1 P. Wms. 181; *The Master and Company of Gunmakers v. Fell*, Willes, 588; *Hinde v. Gray*, 1 Scott N. R. 123; *Clarke v. The Governors of the Company of Tailors of Exeter*, 3 Lev. 241.

*Pollock, C. B.* There must be judgment for the plaintiff. The case is governed by the decision of this court, in *Mallan v. May*, which was founded on *Chesman v. Naisby*.

*Park, B.* The case resembles *Mallan v. May*, and we are satisfied with that decision.

*Alderson, B.* I cannot distinguish the case from *Mallan v. May*; the breach is, that the

defendant traded in a district within which he might be lawfully restrained from trading.

Judgment for plaintiff.

*Green, executor of Gosnell v. Price.* Exchequer, H. T. Jan. 27, 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Flower v. Hartopp*, 6 Beav. 476.

VENDOR AND PURCHASER.—OBJECTION TO TITLE.—RIGHT OF RE-ENTRY.

IN pursuance of a decree, a water corn-mill was sold. Upon the usual reference to the Master as to title, it came out that the premises had been the subject of a grant by King Charles I. in 1635, under this proviso: "That if at any time thereafter any mill thereby granted should be in decay or totally ruined, and any suit should be instituted in the Duchy Court of Lancaster, on behalf of the king or his heirs or successors, against any farmer or occupier of the premises for not maintaining the same, and a decree should be made for maintaining, repairing, or new building the same; and the said farmer or occupant nevertheless should not, within one year thereof, obey the said decree, then and so often it should be lawful for the king, his heirs and successors, to re-enter, have again, and repossess the same for ever."

The fee farm rent was sold to the trustees of Colston's Hospital, at Bristol, under the 22 Char. 2, c. 6, and 22 & 23 Char. 2, c. 24, by virtue of which the king was enabled to grant fee farm rents due in right of his crown to trustees, who were authorised to sell and empowered to convey the same by bargain and sale to purchasers.

The Master reported in favour of the title to the mill and premises. His report was excepted to. And the main question was, whether the estate was or was not subject to a right of re-entry on the part of the crown or of the hospital. After argument, and taking time to consider, the Master of the Rolls delivered judgment. His lordship held that the right of re-entry did not appear to have been included in the grant of the fee farm rent. It could only be enforced at the suit of the crown; but the re-entry, even if obtained, would make void *ab initio* the estate granted, and defeat the rent charge. On consideration of the nature of the proviso, and the effect of the statutes referred to, his lordship was of opinion that this was not a right of re-entry which could now be enforced. The exception to the Master's report on this point was therefore overruled.

### CORONER.

It is the province of the Chancellor to issue a writ under the great seal, *de coronatore eligendo*, directed to the sheriff, and requiring the

freeholders of the county to choose a coroner.<sup>a</sup> He also decides in the Court of Chancery, questions arising as to the validity of such election.<sup>b</sup> Upon complaint against a coroner for neglect of duty, or upon an allegation of incapacity, as from being confined in prison, or of incompetency as from mental derangement, or from habits of intemperance, the Chancellor may, where the ground stated appears sufficient, discharge him from his office.<sup>c</sup>

## CHANCERY CAUSE LISTS.

Lord Chancellor.

Previous to and in Easter Term, 1845.

### APPEALS.

S. O. {	Clun Hospital	El. Powis	appeal and
	Attorney-Gen.	do.	petn.
S. O. {	The Sheffield	The Sheffield & Rotheram	
	Canal Co.	Railway Co.	appeal
Day to	Strickland	Strickland	
be	Ditto	Boynton	do.
fixed	Ditto	Strickland	
	Bruin	Knott	do.
	Ditto	ditto	do.
	Miller	Craig	do.
	Davenport	Bishop	do.
pt. hd.	Clifford	Turrell	do.
	Forbes	Peacock	do.
	Tylee	Hinton	do.
	Miln	Walton	do.
	Vandeleur	Blagrove	do.
	Croaley	Derby Gas Co.	do.
	Parker	Bult	do.
	Ladbrooke	Smith	do.
S. O.	Hitch	Leworthy	do.
	Coore	Lowndes	do.
	Drake	Drake	do.
	Dalton	Hayter	do.
	Baggatt	Meux	do.
	Payne	Banner	do.
	Dobson	Lyall	do.
	Moorat	Richardson	do.
	Millbank	Collier do. want of parties	
	Deeks	Stanhope	3 appeals
	Wiltshire	Rabbitt	appeal
	Smith	El. of Eppingham	do.
	Archer	Hudson	do.
	Turner	Newport	do.
	Attorney-Gen.	{ Masters & War- dens &c. of the City of Bristol. }	appeal.
	Trulock	Robey	do.
	Younghusband	Giaborne	do.
	Courtney	Williams	do.
	Whitworth	Gangan	do.
	Bush	Shipman	do.
	Black	Chaytor	do.
{	Mitford	Reynolds	
{	Johnson	Ditto	do.
	Thwaites	Foreman	do.
	Watts	Lord Eglington	do.

<sup>a</sup> F. N. B. 163; 1 Bla. 9, 347.

<sup>b</sup> *In re Coroner for Co. Stafford*, 2 Rus. 475.

<sup>c</sup> *Es parte Parnell*, 1 Jac. & W. 451; *Es parte Pasley*, 3 Dru. & Warr. 34.

## Vice-Chancellor of England.

Previous to and in Easter Term, 1845.

## PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Ap. 14. Huxtable	State of Illinois demurrer
S. O. Montague	Cator 3 causes pt. hd.
{ Breeze	Hawker pt. hd.
{ Ditto	Engliab 2 causes
{ Greenwood	Taylor } exons. 2 sets
{ Cox	Pearce }
T. Tm. Grand Junction Canal Co.	Dimes at request of deft.
{ Hiles (pauper)	Moore }
{ Ditto	Gleadow }
Middleton	Elliott pt. hd.
Wilson	Williams
Gardner	Marshall exons. & fur. dirs.
Kidd	North } exons. 3 sets, and fur. dirs.
Benett	Ravenhill exons. & fur. dirs.
Smith	Farr 4 causes
Cloak	Rolfe 4 caus. fur. dirs. & costs
Hodson	Ball 7 causes do.
Borrodaile	March fur. dirs. and costs
Youde	Jones 4 causes do.
Nicholson	Wilson ditto
Falkner	Birkett
Ap. 11. Biddles	Biddles
Ashton	Parker
Timmis	Brassey 2 causes
{ Tomlinson	Troughton
{ Haydock	Tomlinson
{ Spruce	Perren
Monypenny	Monypenny
Guinand	Nash fur. dirs. and petn.
Guinand	Johnson } & costs
Butlin	Allibone 3 causes, fur. dirs.
Mackereth	Dann ditto
Newton	Hazledine exons.
Grace	Waldron 2 causes
Turquand	Knight
Yeats	Yeats
Clarke	Smith 2 causes
Roberts	Evans
Beale	Warder
Pearce	Pearce
Corbett	Limbrick exon.
Curling	Curling 2 causes
Lane	Husband
Algar	Cock
Crighton	Blink fur. dirs. & costs
Davis	Chanter 4 causes
Montgomery	Calland fur. dirs. and costs
{ Cleaver	Slown } fur. dirs. and costs
{ Ditto	M'Hallam }
Clowes	Sharpe
Petre	Eastern Counties Railway
Ball	Lewis fur. dirs. and cost
Lloyd	Laver ditto
Anderson	Wright
Battershall	Bp. of Winchester 3 causes
Donnay	Walmaley fur. dirs. & costs
Losack	Gordon ditto and petn.
Hancock	Wakefield
Grimble	Burnell fur. dirs. and costs
Jenkins	Cross exceptions
Bryant	Daniels fur. dirs. and costs
Harvey	Bailey exceptions
Hamilton	Russell fur. dirs. and costs
{ Bentley	Hoad }
{ Ditto	Taylor } ditto

## New Causes.

Roberts	Roberts
Howard	Gask
{ Atkinson	Jones }
{ Ditto	Manley }
Jones	Morrall
Ap. 11. Rooke	Newcombe
Stevens	Stevens
Gould	Uttermore
Dallimore	Ogilvie
Darbo	Richards
Mayne	Reynolds
Bean	Murray
Slack	Rylands
Hamilton	Russell
Ap. 11. Richardson	Richardson
Ap. 11. Cholmondeley	Cholmondeley
Ap. 11. Dehany	Scott

## Vice-Chancellor of the Exchequer.

Previous to and in Easter Term, 1845.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

M. Tm. { Dodsworth	Kinniard at request of deft.
1845. { Do.	Ditto
Apl. { Ellice	Alsager pt. hd.
12 { Ditto	Goodson } 5 causes fur. dirs. and costs
Ap. 9. Cooper	Hewson re-hearing
To fix { Strickland	Strickland }
a day { Ditto	Ditto }
{ Hobson	Everett }
{ Ditto	Ferraby }
{ Carmichael	Carmichael exons.
Ap. 15. Law	Law
Ditto	Ditto
{ Millbank	Collier cause
Ditto { Millbank	Stevens 3 caus. fur. dirs. & costs
Thomas	Shirley ditto

## Easter Term—New Causes.

Edwards	Browne
Thornton	Wilkinson
Bruce	Morice
Pott	Todhunter
Dn. and Chap-ter of Wells	Dodgington
South	Bayley
Moore	Jervia

## Vice-Chancellor of the Admiralty.

Previous to and in Easter Term, 1845.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Short	Emperingham 2 demurrers
Thornton	Portsmouth and Arundel Navigation Co. demr.
Ap. 15 Broad (pauper)	Robinson
Ditto Barnett	Deane
To fix { Vincent	Bishop of Sodor and Man
a day { Phelps	Deardin
{ Holt	Dewell
{ Palmer	Palmer
{ Finch	Lipscombe
{ Holland	Ditto
Barkley (pauper)	Barkley

Carnall	Carnall exons.
Kyffin	Jones
Ogle	Corthorn fur. dirs. & costs
Bassett	Tancred
Girdlestone	Richards exons.
Holford	Holford fur. dirs. and costs
Inge	Kenny 7 causes ditto
Worrall	Butler
{ Whittaker	Wright exons.
{ Ditto	Ditto fur. dirs. and costs
M'Mehon	Burchell exons. & fur. dirs.
Jarman	Depree 6 causes fur. dirs. & costs
Cox	Knapman 7 causes ditto
Waddilove	Taylor exons.
{ Bailey	Rees } fur. dirs. and
{ Ditto	Webber } costs.

*Easter Term.—New Causes.*

Warren	Russell
Bolton	Ward
Forsyth	Ellice
Selby	Thompson 6 causes
Bradlow	Barlow
Mackarel	Bailey
Corrie	Byrom

**BANKRUPTCY—DIVIDENDS DECLARED.**

*From Feb. 28th to March 28th, 1845, both inclusive, with dates when gazetted.*

Adams, E., Blenheim Street, New Bond Street, Livery Stable Keeper. Div. 3s.  
 Alsop, R., Manchester, Grocer. Final div. 2s. 8d.  
 Armfield, R., King Street, Cheapside, Button Manufacturer. Div. 3s. 8d.  
 Bail, J., Salisbury, Cabinet Maker. Final div. 6s.  
 Bannister, J., and D. Simpson, Liverpool, Shipwrights. Div. 2s. 6d.  
 Barry, F., Rye, Sussex, Miller. Div. 2s. 1d.  
 Bates, W. H., Birmingham, Factor. Div. 6d.  
 Beulton and Palmer, Stafford, Builders. Div. 11d.  
 Braddick, J. W., Bristol, Farmer. Div. 3d.  
 Broome, W., and W. Hardy, Oxford Street, Drapers. Div. 3s. 2d.  
 Bulmer, T., South Shields, Rope Manufacturer. Final div. 5s. 2d.  
 Burgess, J., Cratfield, Suffolk, Farmer. Div. 1s. 6d.  
 Campion, J. and W., Whitby, York, Ship Builders. div., (Final div., on separate estate of W. Campion, 8s. 1d., on separate estate of J. Campion, div. 3s. 6d.)  
 Charters, W. and P., Merthyr Tydvil, Glamorgan, Tea Dealers. Div. 2s. 10d.  
 Clough, S., and W. T., Eccleston, Lancaster, Alkali Manufacturers. Div. (on separate estate of S. Clough, 7s. 6d.)  
 Cochran W., Lima, Peru, and J. P. Robertson, London, Merchants. Div. 2d.  
 Cock, W., Bungay, Suffolk, Grocer. Div. 1d.  
 Cogan, W., Plymouth, Builder. Div. 1s. 9d.  
 Coles, J., New Bond Street, Jeweller. Div. 8s. 1d.  
 Conibere and Butler, Birmingham, Woollen Drapers. Div.  $\frac{1}{4}$  of a penny.  
 Copper, W., Reading, Grocer. Final div. 2d.  
 Cox, S., Hendon and Brunswick Street, Horse Dealer. Div. 20s., (on estate of J. Roalfe, formerly partner of the bankrupt.)

Currie, R., Newcastle-upon-Tyne, Stationer. Div. 8d.  
 Davies, E., Great Crosby, Lancaster, Blacksmith. Div. 2s. 7d.  
 Davis, J. P., Bromley, Kent, Innkeeper. Final div. 1d.  
 Denison, J. H., Nelson Square, Blackfriars Road, Div. 6s.  
 Dewe, J. and R., Broad Street, Oxford, Bookseller. Div. 1s. 11d., (on separate estate of J. Dewe, div. 1s. 9d.)  
 Dobson, T., sen., J. Dobson, and T. Dobson, jun., Kidderminster, Carpet Manufacturers. Div. 2d.  
 Dore, W. L., King's Head, Egham, Surrey, Innkeeper. Final div. 4s. 2d.  
 Dunn, T., Newcastle-upon-Tyne, Grocer. Final div. 6s. 5d.  
 Eccles, S., and C. Kidings, Manchester, Cotton Manufacturers. Div. 9s. 6d., (div. on separate estate of S. Eccles 8s. 4d., on separate estate of C. Kidings, div. 1s. 4d.)  
 Eldridge, T., Upper North Place, Gray's Inn Road, Coach Builders. Div. 8s.  
 Eskrigge, T., Warrington, Lancaster, Cotton Manufacturer. Div. 7d.  
 Fisher, S., York, Linen Draper. Div. 5s.  
 Garnett, J., Liverpool, Merchant. Div. 4d.  $\frac{1}{2}$  of a farthing.  
 Gibbins, J., High Street, Marylebone, Carpenter. Div. 3s. 7d.  
 Glazebrook, J., Sand Pits, Birmingham, Carpenter. Div. 6d.  
 Goren, J., Orchard Street, Portman Square, Scrivener and Coach Maker. Div. 4d.  
 Graham, E., Dover Street, Piccadilly. Music Master. Div. 1s. 5d.  
 Green, T. W., Leeds, Bookseller. Div. 5s.  
 Green, G. J., Birmingham, Glass Manufacturer. Div. 2d.  
 Harriot G., Ormakirk, Lancaster, Beer Brewer. Div. 1s. 7d.  
 Harrison, S. W., Bristol, Mason. Div. 4s.  
 Hart, D., Cambridge, Perfumer. Div. 8d.  
 Hayton, J., Maryport, Ship Owner. Final div. 1s. 11d.  
 Heywood, C. S., and W., Manchester, Warehouseman. Final div. 1d.  
 Heathorn, J. L., Abchurch Lane, Ship Owner. Div. 8s.  
 Heron, E., Hartlepool, Butcher. Div. 1s.  
 Holdsworth, G., Salterley Mill, Halifax, York, Worsted Spinner. Div. 1s.  
 Hoskins, F., Temple Street, Birmingham, Wine Merchant. Div. 1s. 9d.  
 Kennedy, G., Aspatia, Cumberland, Draper. Final div. 3s. 2d.  
 Langhorn, J., Berwick-upon-Tweed, Banker. Div. 10s.  
 Lett, A., Lett's Wharf, Commercial Road, Lambeth, Timber Merchant. Div. 4s. 10d.  
 Lister, J. C., Wolverhampton, Wine Merchant. Div. 1s. 6d.  
 Mallalieu, J., now or late of New York, Dealer and Chapman. Div. 3s. 8d.  
 Masterman, C. S., Croydon, Grocer. Div. 2s. 3d.  
 Mearns, W. A., Acre Lane, Clapham, Brewer. Div. 1s. 3d.  
 Megarey, T., Love Lane, Billingsgate, Coal Merchant. Div. 3s.  
 Miller, T., Green Street, Leicester Square, Baker. Div. 1s. 4d.  
 Milner, J. T., and C. Bedford, Kingston-upon-Hull, Confectioners. Final div. 2s. 9d., (div. on

separate estate of J. T. Milner, final div. 20s., on separate estate of C. Bedford, div. 4s.)  
**Montefiore J.,** Nicholas Lane, Merchant. Div. 5s.  
**Morris, Martin,** Park Street, St. Augustine, Bristol, Upholsterer. Div. 9d.  
**Murray, E. T.,** Church Street, Newington, Surrey, Leather Seller. Div. 9d.  
**Newman, C.,** Scripts, Little Coggeshall, Essex, Miller. Final div. 3d.  
**Newton, G.,** Seaham Harbour, Durham, Hosier. Final div. 3s. 10d.  
**Newton, C.,** and C. Worssam, Kingland Basin, Kingland Road, Engineers. Div. 4s. 6d.  
**Owen, J.,** and S. Owen, Sheffield, and S. Owen of Sydney, New South Wales, Merchants. Div. 2s. 6d., (on separate estate of J. and S. Owen, div. 20s.)  
**Palmer, R. B.,** Bath, Watchmaker. Div. 3s. 4d.  
**Parr, T.,** Liverpool, Painter, &c. Div. 1s. 6d.  
**Pearson, W.,** Chelmsford, Draper. Final div. 2s. 10d.  
**Peaton, J.,** Paddington Street, Marylebone, Ironmonger. Div. 1s. 6d.  
**Prosser, W.,** sen., and W. Prosser, jun., Pitfield Street, Hoxton, Linen Drapers. Div. 9d.  
**Richardson, W.,** Newcastle-upon-Tyne, Glass Manufacturer. Div. 1s.  
**Robbins, J.,** Winchester, Bookseller. Div. 2s. 6d.  
**Roberts, T.,** Blackman Street, Southwark, Linen Draper. Div. 3s. 10d.  
**Robertson, W. P.,** Buenos Ayres, Merchant, and J. P. Robertson of the same place. Div. 6d.  
**Robinson, R.,** 457, Strand, Coal Merchant. Div. 2s.  
**Robinson, T.,** Leicester, Wine Merchant. Div. 4s. 10d.  
**Robinson, T.,** Leadenhall Street, Tallow Merchant. Div.  $\frac{1}{2}$  of a penny.  
**Sargent, J. N.,** Nottingham, Grocer. Div. 5s. 6d.  
**Sedgley, S.,** Dudley, Stafford, Grocer. Div. 1s. 10d.  
**Sharpe, C.,** and W. D. Clarke, Berners Street, Upholsterers. Final div. 3d.  
**Sherwood, T.,** Tilehurst, Reading, Farmer and Brick Maker. Div. 5s.  
**Simmons, J.,** and J., and J. Pine, Battersea, Manufacturers of Potash. Final div. 5d.  
**Smith, R.,** late of Worcester, Attorney. Div. 6d.  
**Taylor, James,** Brighton, Bookseller. Div. 2s. 4d.  
**Terry, C.,** Shoe Lane, Quill Merchant. Final div. 1d.  
**Thelwell, R.,** Manchester, Silversmith. Final div. 4s. 4d.  
**Thorn, T. G.,** Southampton, Builder. Div. 6s. 2d.  
**Trapp, T.,** and T. P. Trapp, 1, Church Street, Southwark, Tallow Chandler, (div. on separate estate of T. Trapp, 20s., div. on separate estate of T. P. Trapp, 20s.) Firm div. 1s. 3d.  
**Tapp, C.,** Wigmore Street, Marylebone, Coach Maker. Div.  $\frac{1}{2}$ ths of a penny.  
**Vardy, M. W.,** Newbury, Berks, Bookseller. Div. 3d.  
**Wacey, Jonathan,** Beech Street, Barbican, Bookseller. Div. 9s. 8d.  
**Walker, T.,** late of Kirkstall, Leeds, Brewer. Final div. 6d.  
**Webb, R. J.,** Bath, Wine Merchant. Div. 1s. 9d.  
**Webb, J. G.,** Rosamond Buildings, Islington, Mineral Water Manufacturer. Div. 5s.  
**Whitehead, J.,** Ainsworth, Lancaster, Brewer. Div.  $\frac{1}{2}$ ths of a penny.  
**Whittaker, H.,** Macclesfield, Chester, Silk Throwster. Div. 7s. 4d.  
**Williams, W.,** Moon Street, Bristol, Builder. Final div. 1d.

**Woodhead, J.,** and J. Woodhead, Bradford, York, Worsteds Stuff Manufacturers. Div. 4s.  
**Worsley, T.,** Stockport, Chester, Hosier. Final div. 1s. 0d.  
**Wright, B.,** Liverpool, Dealer in Paint. Div. 10s.

## PRICES OF STOCKS.

Tuesday, April 1st, 1845.

3 per Cent. Consols Annuities . . .	99 $\frac{1}{2}$	a	$\frac{1}{2}$	a	$\frac{1}{2}$
India Bonds 3 per cent. 1000l. . . . .	72s.				pm.
Ditto under 1000l. . . . .	69s.				pm.
3 per Cent Consols for Acct., 15 April, 99 $\frac{1}{2}$	a	$\frac{1}{2}$	a	$\frac{1}{2}$	a
Commissioners for the Reduction of the National Debt, purchased at 99 $\frac{1}{2}$	3 per Cent. Consols.				
Exchequer Bills, 1000l., 1 $\frac{1}{4}$ d	59s.	a	62s.	a	3s. a
Do.	500l.				1s. pm.
Do.	small				62s. a 3s pm.
Do.					59s. a 7s. a 63s. pm.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### House of Lords.

#### NOTICES OF NEW BILLS.

Transfer of Property Amendment.  
 Debtors and Creditors.

#### BILLS FOR SECOND READING.

Actions on Death by Accident.  
 Divorce, Privy Council.  
 City of London Trade.

#### TO BE REPORTED.

Deodand Abolition.  
 Bail in Error in Misdemeanors.  
 Service of Common Law Process Abroad.  
 Service of Scotch Process Abroad.  
 Service of Irish Process Abroad.

#### THIRD READING.

Companies' Clauses Consolidation.  
 Property Tax.

### House of Commons.

#### NOTICES OF NEW BILLS.

Abolishing Punishment of Death.  
 Prisoners Counsel.  
 Inclosure of Commons.  
 County Rates.  
 Debtors and Creditors.

#### BILLS FOR SECOND READING.

Medical Practice.  
 Roman Catholics' Relief;  
 Jewish Disabilities.

#### BILLS IN COMMITTEE.

Clerks of the Peace, 14th April.  
 Poor Law Settlement.  
 Bastardy.  
 Property in Public Institutions.

## THE EDITOR'S LETTER BOX.

WE have received some valuable observations on the present state of the law of Debtors and Creditors, with suggestions for its amendment, and will, if possible, find room for them in our next number.

*Erratum.*—Page 405, column 1, line 40, for *very read try*.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 12, 1845.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HONAT.

### ON THE RIGHT TO PUBLISH OFFICIAL DOCUMENTS.

AN interesting question is raised by a writer in the last number of the *Quarterly Review* as to the right which a public servant, or his representatives, has to publish his official papers. In the publication which has recently taken place by the present Earl of Malmesbury of the diaries and correspondence of the first Earl, three kinds of documents have been printed. 1. The ordinary official dispatches and communications between the minister and his own court and that to which he was accredited. 2. The more secret and confidential correspondence which, under the form and style of private letters, are yet official to a great extent. 3. Memoranda, minutes of conferences or conversations, and intelligence collected in the ministerial character. 4. Extracts of diaries which Lord Malmesbury kept through his life, while he held official situations.

The writer conceives that as to the first three classes a public minister has no private and independent right of publication; although it seems conceded that with the consent of the government of the day the publication may take place. “Of the two earliest publications by private persons of diplomatic papers that we possess—‘*The Cabala*’ and Digg’s ‘*Complete Ambassador*’—it is observable that both, and particularly the latter, referred to transactions quite obsolete, and were published during the license of the Commonwealth, but that when the ‘*Cabala*’ was republished, after the Restoration, with some additional mat-

ter, it was with the express sanction of the Secretary of State. The *second* volume of Sir Wm. Temple’s works, published by Swift, which contains his diplomatic letters, was especially dedicated to King William, which the first volume was not, and had, no doubt, his countenance and sanction.”

The reviewer, however, admits that though “in strictness no state papers can be printed without the consent of the crown, yet in practice any formality of sanction has been reasonably considered as unnecessary in cases which, by long lapse of time and entire change of circumstances, can no longer affect either private feelings or public interests, and have passed into the fair and undisputed domain of history.”

The question as to the propriety of publications of this nature we think stands on a different ground from the legal right. We very much doubt whether the reviewer be correct in his law. If he be right, the first question that arises is, who is to interfere? Can the Foreign Secretary for the time being obtain an injunction to restrain a publication of this nature? Can the crown interfere in any other manner? Can the publication be indicted *contra bonos mores*? We apprehend that all these questions must be answered in the negative; and if so, we cannot see what other legal proceeding could be sustained. If a minister or ambassador chooses to publish official documents, whatever bad taste or bad faith he may show, we cannot see how he is to be prevented.

With respect to private letters, the law is much more defined. The reviewer states, from Mr. Justice Story’s Com-

mentaries, some of the familiar rules as to this point. "Private letters, even as literary compositions, belong to the writer, and not the receiver, who at most has a special property in them which does not give him a right to publish them. At most the receiver has only a joint property with the writer."<sup>a</sup> This is indisputable. But Mr. Justice Story, a few paragraphs further, says, "But the utmost extent to which courts of equity have gone in restraining any publication by injunction, has been upon the principle of *protecting the rights of property in the book or letters sought to be published*. They have never assumed, at least since the destruction of the Star Chamber, to restrain any publication which purports to be a literary work, upon the mere ground that it is of a libellous character, and tends to the degradation or injury of the reputation or business of the plaintiff who seeks relief against such publication. For matters of this sort do not properly fall within the jurisdiction of courts of equity to redress, but are cognizable in a civil or criminal suit at law. To justify, therefore, the interposition of a court of equity by way of injunction, in cases of literary publication, there must be an invasion by the defendant of the rights of property by the plaintiff, or some direct breach of confidence connected therewith."—P. 263.

We conceive, therefore, that it is quite clear that any journal kept by any public man, in whatever station, may be published by him in his life time, or his representatives after his death, although it details matters of a private nature affecting living persons, subject of course to the laws against libel: and if the power acquired by station be employed in publishing state or other public papers, we do not see how this publication can be legally restrained. It is true that a court of equity will prevent the disclosure of secrets communicated in the course of confidential employment;<sup>b</sup> but these are secrets connected with the right to or enjoyment of property.

#### THE COMMITTEES OF THE HOUSE OF COMMONS.

WE wish to call attention to the following passage, which we extract from *The*

<sup>a</sup> 2 Story, 261, 3rd ed. The reviewer quotes from an earlier edition.

<sup>b</sup> 2 Story, 265.

*Times* of Tuesday last. After giving an account of the proceedings before committees on several railway bills, we find the following notice:—

"Notwithstanding the repeated statements which have appeared in the morning journals as to the serious inconvenience experienced by the reporters in their endeavours to perform their duty in these committees, owing to the noise and pressure which prevail in the rooms, no steps have been taken to remedy the evils of which they have complained; nor, with the single exception of Mr. Strutt's committee, has the least effort been made to obviate them. By the order maintained in that gentleman's committee, not only is the business got through in one-half of the usual time, but the chairman is spared the exertion of calling for order every five minutes, and the annoyance of seeing his request treated with the greatest disrespect and indifference. Mr. Strutt permits those persons only to remain in the rooms who are immediately connected with the case; and if they should be very numerous, they are placed in the passage and called in one by one as required. On the first repetition of a call for order, Mr. Strutt clears the room, and speedily insures regularity and decorum in the proceedings."

In the same paper which contains this statement we perceive that the noble President of the Board of Trade stated that it would require from 140,000,000*l.* to 150,000,000*l.* to complete all the proposed railways. When it is remembered, then, that it is these committees of the House of Commons that have, in the first place, to deal with the undertakings which involve these immense sums of money, (besides many other matters,) it will be seen how important it is that common order and decency should be preserved before them. These committees on railway bills are now, according to the resolutions which we recently printed, to proceed judicially: for the next three months they will have the most important duties to perform; and we trust we shall not hear of any complaints similar to that to which we have called attention. The press will be the most efficient check on their proceedings.

#### PRACTICAL POINTS OF GENERAL INTEREST.

##### HIGHWAY.

THE following case decides a point of some importance to pedestrians. The declaration stated that the defendant wrongfully placed large quantities of rubbish on the common highway, near and at the side

of a certain wall on the side of the highway, and near a certain canal of water; by means whereof in the night, the plaintiff, then lawfully going along the said highway, was induced to walk on the rubbish, and thus to slip over the rubbish into the canal. It was contended that this declaration was bad, inasmuch as it was consistent with every allegation that the accident arose from the plaintiff's negligence, and that he might have avoided it by ordinary care. The Court of Exchequer thought otherwise. *Pollock, C. B.*, said, "There is a clear statement of injury, followed by damages, to the plaintiff. It is averred that the materials were wrongfully kept and continued by the defendant upon the highway, by means whereof the plaintiff, whilst lawfully walking along the highway, was caused to walk on and over the materials, and to fall into the canal. We see no distinction between this case and that of a man who drives his carriage over a heap of rubbish laying in the highway and upsets the carriage. Whether the plaintiff could by ordinary care have avoided the accident, has been decided by the jury." *Goldthorpe v. Hardman*, 1 Dowl. & L. 441. In the case of *Marriott v. Stanley*, 1 Scott, N. S. 392, 1 M. & G. 568, in an action to recover a compensation in damages for an injury occasioned by an obstruction in a highway, it was left to the jury to say whether or not the plaintiff was himself in any degree the cause of the injury, whether he had acted with such a want of reasonable and ordinary care as to disentitle him to recover; and it was held that the distinction was proper.

### HORÆ JURIDICÆ.\*

MR. LEWIS has just published a pamphlet on "The Profession of the Law," which, although somewhat discursive, is written in a pleasing manner. We cannot say that there is much novelty in its views; neither do we always agree with the writer; but there is nothing to offend, and much to elevate the character of the practitioner. We have only room for a few extracts, which will show the nature of the work. The *functions* of the profession are thus adverted to:—

"Such are these, that they concern the pro-

\* By W. D. Lewis, Esq., Barrister-at-law. Benning.

tection of every right conferring dignity and happiness on temporal existence; rights domestic, social, political, religious; and its correlative, the redress of wrongs to property, fame, limb, liberty, and life. Justice is the queen of virtues, and the jurist is a ministering attendant in her court." His is a service ennobled by the dignity of its employer, and ennobling in its turn the minister and his associates. It is no apprenticeship to dishonest art, overreaching avarice, or cruel hate; neither is it allied to any scheme which, by the arts of a meretricious oratory, or the over-wise distortion of technicalities, seeks to inveigle justice herself into ruinous compact or dallying with vice. *Sum cuique* in the most enlarged sense (not as being linked with the idea of acres or coin) are the watch-words of the lawyer. His also pre-eminently are the charities of life. The forsaken widow, the helpless child, the defamed daughter, the slandered wife, the unsuccessful parent, the deceived creditor, the oppressed menial, the plundered veteran, the overawed citizen, the persecuted religionist, the outraged altar, these (but in part only) form the arena for developing the same exquisite energies of the jurist. His, again, is the judicious forecasting of events in the matrimonial, testamentary and family arrangements of property, together with its satisfactory adjustment under burthens, and its extraction from complex difficulty.

"No less conspicuous are the *extent* and *variety* of position occupied by this body. The encroachment of the apple-tree and the succession to the crown, the inheritance of the potato-garden and the devolution of the dukedom, the immoderate distress and the robbery which strikes a panic, the village-feud and the international conflict; these, with countless similar cases, engage their energies and educe their skill. The secluded hamlet and the over-peopled city each call in aid the services of the jurist. The affairs of the parish-vestry, too, and the politics and diplomacy of cabinets, alike attest the sanctions of law, in representatives of various grade. The assembly of hereditary legislators, again, acknowledges the presidency of Law's chief dignitary, while the yeoman's will is moulded into form by its subordinate officer. The monarch's conscience is deposited with the one, and the squire's title deeds repose in the chamber of the other. The domestic and private concerns, too, of the gentry and commonalty are ever regardful of the jurist's admonitions. Does the heir attain his majority, or the daughter enter into mar-

b "It may be proper to remark, that, throughout these observations, the term 'justice' is generally employed both as expressing the moral principle or virtue of justice, and also in the sense of 'distributive and corrective justice, which regulates the claims of individuals in a community, requires restitution or compensation for any deviation from such claims, or punishes those who have violated them.'" (Abercrombie, *Philos. Moral Feeling*, 57, 58.)



riage? These events induce arrangements conceived after his suggestions. The parish-priest, also, seeks his aid, and the refractory ratepayer and defaulting tithe-renderer are taught the practical character of law. The convivialities of society, likewise, command the participation of the lawyer, and this, as well in the stately saloons of royalty, as within the humble tent of festive villagers."

We may next give Mr. Lewis's views as to the regulation and control of the bar, and on professional remuneration, — to which, he says, recent circumstances have given an importance :—

"Perhaps, there can be little controversy as to the necessity for the maintenance and efficient exercise of some disciplinary authority appointed to take cognizance of every serious breach of professional morality. Powers of monition, interdict, suspension and deprivation should not be the regime solely of the courts ecclesiastical. Nor should the provision be so scanty and unvarying as to afford solely the extreme remedy of *expulsion*, for, by treating (as it would) instances of mere indiscretion and indecorum as equally heinous with the most unblushing impropriety, it could not fail to be visited with the just odium ever attracted by systems cruelly persecuting; the inevitable consequence of which would be, that the power would lie dormant, and not be called forth even in the grossest cases of delinquency. Such, it may be feared, are the general results of the right of government and control which at present belongs to the ruling authorities in our Inns of Court. Without doubt, the age, character, position and occupations of the honourable persons who constitute these bodies, eminently qualify them for the equitable and efficient exercise of such a power, if its scope were more extended, its provisions better adapted, and its penalty less uniform. Nothing being left to be desired, therefore, in regard to the *machinery* for the enforcement of a proper system of discipline, an extension of the *power* of the Inns is alone necessary to the satisfaction of this pressing exigency. And it is impossible to suppose such a grievance still remaining unredressed; for such conduct would argue a most culpable disregard on the part of the legislature, of the honour and well-being of a body in whom, much more than in any other single society, (if we except the clerical,) are centred all our regards for the prosperity and welfare of our country.

"It is true that the danger to be apprehended from the extension of this power of control is an undue tightening of the cords of forensic decorum, and an unhealthy restriction of individual judgment and dependence; and, beyond question, to all orderly members of the Bar the obligations of usage and established etiquette are already sufficiently stringent, without the assistance of any court of discipline. But, although this apprehension may still be borne in mind in adjusting the details of any scheme

which may be suggested, it seems plain that no glaring breach of professional liberty would ever obtain the sanction, or be inflicted at the hands of a body, the great majority of whom would be themselves actual practitioners.

"Another topic which has often been broached, but the difficulties of which have as frequently been found insuperable, relates to the fitting method of *professional remuneration*. All are agreed in deprecating the evil influence of the present system; and some have not scrupled to attribute to that system, and to justify upon the ground of it, the use of certain common forms in deeds, as being necessary to ascertain and fix the measure of the draughtsman's remuneration, but which are alleged to be otherwise useless. Leaving this argument to be urged by those who feel its force, (though it is greatly to be regretted that such opinions should be entertained,) it must be conceded that the present plan of remuneration offers temptations to irregular or sinister conduct in practitioners, which would otherwise be unknown; and that it is not in any eminent degree agreeable to the dignity of the lawyer's functions. But if the general amount of professional profit be not greater than the extensive and arduous services of the body, the maintenance of their respectability, and the expensive preparation for their calling, render just and necessary, (and no one can seriously contend otherwise,) it seems to be a matter comparatively unimportant to the general community, whether the profit be realized by a percentage, or upon the principle of *ad valorem*, or in the form of detached items upon the several stages of business. Nor is it any ground for changing the present system, that (*ceteris paribus*) the poor and poor estates pay as much as the rich and rich estates. For, upon what principle of equity or national policy can these be called upon to contribute, as under any altered plan they in effect would, towards the expense of professional attention to the secular affairs of their less fortunate neighbours? If, indeed, lawyers are to become a body of government stipendiaries, then the tax to be raised for their support might, perhaps, be levied upon some such principle as that which regulates the imposition of stamp duties. But, until the march of intellect or of political economy (*utrum horum major accipere?*) has thus far outstripped all our present expectations, the systems of *ad valorem* and per-centage must be set aside as (to say the very least) inconvenient, undesirable, and unjust. The only true and proper method (and it is one perfectly adequate) of reconciling the present system of professional remuneration with the public weal, is by practically exercising that generous care and enlarged consideration for private concerns which both the interest and the honour of jurists alike demand.

"And let it not be forgotten what grievous injustice would be committed by these supposed systems towards all but the highest and most prosperous of practitioners. Many there are whose engagements seldom concern estates and

affairs of great importance, and whom, therefore, the plans in question would provide with a most paltry pittance, utterly unworthy as a maintenance, and ruinously degrading in the incentives to irregularity which it would supply; while, on the other hand, be it observed, the more fortunate would not only escape these evils, but would actually enjoy superabundant profit, increased in nearly the same proportion as their neighbours' loss; and *that*, without any diminution of the labour of these, or any addition to the burthens of the former."

## QUARTERLY ANALYTICAL DIGEST OF CASES.

### LAW OF COSTS.

It will afford the means of convenient reference to submit to our readers the points relating to the Law of Costs decided in all the courts, contained in the several reports published since the 1st November last. They are as follow :—

#### EQUITY.

"1. A defendant, a purchaser, demurred to a bill for specific performance, and his demurrer was overruled. He then asked for a case to be sent to a court of law, which was granted; and the opinion of the judges was against him. Ultimately, however, the bill was dismissed with costs. Held that the defendant was entitled to his costs at law, as well as in equity. *Forbes v. Peacock*, 12 Sim. 628; 26 L. O. 254, 431.

2. Plaintiffs filed a supplemental bill for the purpose of bringing before the court the assignees of a defendant who had become bankrupt. The plaintiffs were fully described in the original bill, but in the supplemental bill, their places of residence were omitted. Held, on motion, that, they must give security for costs. *Campbell v. Andrews*, 12 Sim. 578.

3. The plaintiff's solicitor employed a Queen's counsel and a junior to oppose a motion for further time to answer. The Vice-Chancellor of England held that he was justified in so doing; and ordered the taxing-master, who had disallowed the fees of the junior counsel to review his taxation. *Cooke v. Turner*, 12 Sim. 649.

4. Costs given to the Bank of England out of a trust fund of government stock, in the suit of the *cestui que trusts* for the application of the fund according to their interests, although the decree was made against the bank—the bank having acted upon a doubtful construction of a late act of parliament, before that construction had been settled by any judicial determination. *Bristed v. Wilkins*, 3 Hare, 235.

5. Cases in which costs may be given to a plaintiff, out of an estate, notwithstanding the dismissal of the bill. *Westcott v. Culliford*, 3 Hare, 274."

"6. The mortgagee, or incumbrancer, consenting to a sale of the mortgaged premises, in an administration suit, does not thereby waive his right to be paid his principal, interest, and costs out of the monies produced by the sale, in priority to the costs of the plaintiffs in the cause. *Hepworth v. Heslop*, 3 Hare, 485."

"7. On the motion to dismiss the bill for want of prosecution, under the 16th and 17th (amended) orders of 1828, a court of equity will not enter into the merits of the cause to determine whether the bill should be dismissed without costs; but will, with reference to the question whether the common order should be made, consider only the conduct of the parties in the cause in respect to its prosecution. *Stagg v. Knowles*, 3 Hare, 241."

### COMMON LAW.

"1. A cause standing for trial, the plaintiffs obtained leave to amend by striking out the names of some of the defendants, on payment of costs, the remaining defendants having liberty to plead *de novo*. The Master allowed the defendants whose names were struck out their entire costs of the cause, and the remaining defendants the costs of the day only. The latter defendants afterwards paid money into court, which the plaintiff accepted. The Master then taxed the plaintiffs their costs, not however allowing them any costs subsequent to the former pleas. Held, a right taxation. Held also, that the remaining defendants were entitled to their costs of the former pleas and subsequent proceedings, and that the Master could not have allowed these on the former taxation. *Jackson v. Nunn*, 4 Q. B. 209; 25 L. O. 314.

"2. Costs on the reduced scale may be taxed for a defendant, under the direction to taxing officers, of Hilary Vacation 4 W. 4, though plaintiffs' costs only are mentioned in the regulation. Plaintiff, in an action of debt for goods sold and delivered, wherein less than 20*l.* was demanded, took out a summons for trial by the sheriff. Defendant opposed the order, on the ground that a question of law would arise, and the judge made no order. Defendant obtained judgment as in case of a nonsuit. Held, that the Master was right in taxing defendant's costs on the lower scale. *Williamson v. Heath*, 4 Q. B. 402; 25 L. O. 141, 366.

"3. A party promoting a suit having been required to indemnify the nominal plaintiffs against costs, to the satisfaction of the Master, the Master fixed the indemnity at 300*l.* The Court of Common Pleas refused to interfere. *Orchard v. Coulsting*, 7 Scott, N. S. 414; 27 L. O. 206.

"4. A sum less than one-sixth having been taxed off an attorney's bill, before the passing of the 6 & 7 Vict. c. 73, and a rule having been obtained since that act, calling on the client to pay the costs of taxation, the Court of C. P. discharged the rule on being

satisfied that the bill had been reduced by a substantial sum. Held, per *Tindal, C. J.* and *Maule, J.* that such a rule is within the exception in the statute of 6 & 7 Vict. c. 73, which repeals the 2 Geo. 2, c. 23, "except so far as relates to any matter or thing done at any time before the passing of this act." *Hodge v. Bird*, 1 D. & L. 957.

"5. After a case stood for trial, and was made a remanet, the plaintiff obtained leave to amend his declaration and particulars, the defendant to be at liberty to plead, *de novo*. On the amended declaration, the defendant paid money into court, which the plaintiff took out: Held, that the plaintiff was not entitled to the costs of preparing for the trial. *Wilton v. Snook*, 1 D. & L. 964.

"6. The allowance of the costs of copies of a short-hand writer's notes, and of what parts of them, is a matter for the exercise of the Master's discretion; and he is not bound by the certificate of counsel respecting them. *May v. Tarn*, 1 D. & L. 997.

"7. The rule adopted by taxing officers, of not allowing costs of more than two counsel, unless ten witnesses were examined at the trial, is not obligatory under all circumstances; but the Master should exercise his discretion upon each particular case. *Sharp v. Ashby*, 1 D. & L. 998.

"8. Interlocutory judgment for want of a plea having been set aside with costs at the instance of one of two defendants, who appeared separately in an action against both for use and occupation; payment of the costs to the other defendant, who gave a receipt in the action for himself and partner, was held insufficient; although there was nothing apparent on the face of the order to show that it was made at the instance of one only of the defendants. *Showler v. Stoakes*, 2 D. & L. 2.

"9. An attorney had delivered a bill in 1840, and continued to act as attorney afterwards. In 1842, the client being pressed for payment, demanded a statement of his account, and gave two joint notes of hand, which the attorney swore he received, "in lieu of cash." The attorney, after these notes became due and were paid, delivered two other bills, comprising some of the items, and extending over a portion of the time, included in the first: Held, on motion to refer the bills for taxation, that the three bills together, constituting, in point of fact, but one bill: "the payment of any such bill" within the 41st section of the 6 & 7 Vict. c. 73, so as to preclude taxation after the lapse of twelve months, must be a payment after the delivery of the whole of such bills. *Semle*, the mere delivery of a bill of exchange or promissory note, is not a payment within that section, where, if the bill of exchange or promissory note were dishonoured at maturity, the client would remain liable on the attorney's bill. *In re Peach*, 2 D. & L. 33; 28 L. O. 333.

"10. Where a cause with all matters in difference, was referred to arbitration, the costs of the cause and of the reference to abide the

result, and the costs of a cross action between the parties, to be also in the discretion of the arbitrator, but no power was given to enter up judgment for the amount awarded; and the arbitrator found that a sum of 174.3s. was due to the plaintiff, and that nothing was due with regard to any other matters in difference between them, and that the costs of the cross action should be borne equally between the parties; and it appeared that the defendant had successfully resisted an application to try the cross action before the sheriff: Held, the Master having taxed the plaintiff's costs on the higher scale, that the Court of Q. B. would order a reviewal of his taxation. *Elleman v. Williams*, 2 D. & L. 46.

"11. The defendants had obtained a rule for costs of the day for not proceeding to trial, on which the Master had indorsed his allocatur. The Court of Q. B. discharged a subsequent rule *nisi*, calling on the plaintiff to pay the amount so taxed. *Wright v. Burroughes*, 2 D. & L. 94.

"12. An action of trespass for assault and battery was brought against a father and a son. The son, who was a minor, appeared by his father as guardian, and pleaded not guilty. The father appeared by attorney, and pleaded two special pleas. A verdict having passed against the father, and in favour of the son; upon motion to review the taxation of costs, it appeared that the Master had allowed to the son only a guinea for the attorney's expenses for attending the trial at Liverpool, and only the expenses of three sheets of the brief, the same brief including the defence of both the defendants, and the Master had refused to allow any mileage for the attorney's expenses in travelling from Richmond in Yorkshire, where the assault took place, and near to which he resided, to Liverpool. The Master had also refused to allow the moiety of a witness's expenses, who was called for the joint defence, as well as incidentally for that of the son: The Court of Q. B. ordered a reviewal of the taxation, except as to the expenses of the brief. *Alderson v. Waitell*, 2 D. & L. 127.

"13. The copy of an affidavit of increase delivered under Reg. M. T. 1 W. 4, r. 10, must contain a copy of the *jurat* also; the words "sworn, &c.," are insufficient. But the above omission is no ground for setting aside the judgment, but only for reviewing the taxation of costs. *Wheldal v. The Eastern Counties Railway Company*, 2 D. & L. 246.

"14. A rule was made absolute for a new trial, on payment of costs by the plaintiff. The costs were taxed, and demanded on the 4th of May. On the 8th, the defendant obtained a rule *nisi* to discharge that rule unless the costs were paid before the 4th day of the ensuing term. The plaintiff having, in the mean time paid the costs, the Court of Exchequer of Pleas discharged the rule, but ordered the plaintiff to pay the costs of the

application. *Solly v. Langford*, 2 D. & L. 250.

"15. Where a plaintiff succeeds in ejectment, and the costs are taxed, he cannot, in an action for *mesne* profits, recover more than such taxed costs; notwithstanding the taxation took place at the instance of the defendant. *Doe v. Filbiter*, 2 D. & L. 186.

"16. The plaintiffs recovered a verdict in an action of assumpsit on two bills of exchange for 68*l.* 6*s.* for damages and costs. After a fiat in bankruptcy had issued against the defendant, they signed judgment. Afterwards they proved under the commission for the amount of the bills of exchange, the commissioners refusing to allow them to prove for the costs. The bankrupt never obtained his certificate, nor was any dividend paid under the commission. The plaintiffs subsequently sued out a writ of *scire facias* to revive the judgment, solely with a view of recovering the costs. The Court of Q. B. granted a rule to stay proceedings on the *scire facias*. *Woodward v. Meredith*, 2 D. & L. 135.

"17. Payment of an attorney's bill, within the 6 & 7 Vict. c. 73, s. 41, dates from the time at which a bill of exchange or promissory note given in liquidation, is paid, and not from the time of the mere delivery of the instrument. *In re Harries*, 1 D. & L. 1018.

"18. On a motion to stay proceedings in an action on a judgment on the ground that it had been signed against good faith, it appeared that similar affidavits had been previously used, and the same objection successfully urged, on a motion to set aside a writ of *fiat facias* issued on the same judgment. The Court of Q. B. granted a rule to stay proceedings in the action, but without costs, as the defendants ought to have included the judgment in their former motion. *Philpot v. Thompson*, 2 D. & L. 18.

"19. A cause having been made a remanet at the request of the defendant, the plaintiff revealed his writs of subpoena, and attempted to serve copies on two material witnesses, who refused to accept the service, in the presence of defendant's attorney, on the ground that he had told them they ought not to do so. The Court of C. P. discharged a rule for judgment as in case of nonsuit, with costs. *Appleyard v. Todd*, 1 D. & L. 949.

"20. Where a warrant of attorney authorized an appearance to be entered in an action for 200*l.*, and judgment to be suffered in the same action for the said (leaving a blank); and an appearance was accordingly entered, and judgment signed for 200*l.*, together with the costs of the suit, amounting to 3*l.* 10*s.*; and afterwards a *scire facias* was sued out to revive the judgment, and judgment obtained thereon by default, and the defendant, who was in custody, was charged in execution, under a *habeas corpus ad satisfaciendum*, at the suit of the plaintiff. Held, on motion to set aside the judgment, and to discharge the defendant out of custody: that the judgment for costs was not authorized by the warrant of attorney, and was therefore a nullity, and must be set aside in toto; and

that the court could not amend it, by striking out that part which referred to the costs, without a rule to amend. *Page v. South*, 2 D. & L. 108."

#### BANKRUPTCY.

"1. Where deeds were deposited, with a written memorandum, to secure the debt of two partners, and after the death of one, it was verbally agreed that the deposit should be extended to secure the separate debt of the surviving partner: Held, that the costs should be apportioned as to the sums respectively due from the joint and separate estate, in the one case as on a deposit with a written agreement, and in the other as on a deposit by parol. *Ex parte Ford, in re Taylor*, 3 M. D. & De G. 457.

"2. Upon an application by an official assignee to be indemnified by the creditor's assignee from the costs of a pending action, in which the name of the official assignee had been joined as co-plaintiff without his consent, the Court of Review offered him a reference to the commissioner to inquire whether the action was for the benefit of the estate; and that being declined, ordered the petition to stand over till the result of the action was known. Upon the case coming on for further directions, after a verdict obtained against the assignees, it appearing that the creditor's assignee had offered his personal indemnity for the costs of the action a year before the petition was presented, which was declined by the official assignee, the court upon the renewal of that undertaking by the creditor's assignee, dismissed the petition with costs. *Ex parte Turquand, in re Dickinson*, 3 M. D. & De G. 475.

"On taxation of costs, a charge for consulting counsel previously to presenting the petition, and a fee to a second counsel on the hearing, if the petition is of a special nature, ought to be allowed. *Ex parte Ellis, in re Musgrove*, 5 M. D. & De G. 600."

We have selected these various points from the last number of our Analytical Digest, being the First Part of the volume for the present year.

#### OBSERVATIONS ON THE LAW OF DEBTOR AND CREDITOR,

WITH

#### SUGGESTIONS FOR ITS AMENDMENT

WE have received from Mr. James Bryan, a solicitor, the following observations on the Law of Debtor and Creditor, with suggestions for its amendment, by facilitating the recovery of small debts, and restoring, under due restrictions, the power of arrest.

The writer has been induced to put together

a few observations on this subject, in consequence of the just complaints of several respectable tradesmen, of the serious injury which the important alteration in the law of debtor and creditor made in the last session of parliament has inflicted on them.

It may be considered by the writer's more able and learned brethren as an act of presumption in so humble an individual as himself, to think of furnishing material proper for reforming or improving so complicated a system as that of the law of debtor and creditor, upon which so much has been already said and done, as well by the legislature as by many honourable and eminent persons learned in the law; but from the writer's practical acquaintance with the admitted defects of the present law in this respect, he flatters himself his experience and knowledge of the subject may be of some service in suggesting a remedy thereof, free from the objections made to either of the two extremes.

In the first place, then, he begs to observe, that it is generally understood and admitted that as society is at present constituted, and commerce has so considerably increased, it is next to an impossibility to carry on the trade of this country without giving credit, continually for sums as well of small as of large amounts; and that it is also admitted, that the majority of all business transactions do not respectively exceed the sum of 20*l*.

The act of the last session of parliament abolishing arrest for debts to that amount, has been productive of serious injury generally, but particularly to the trading community, inasmuch as it has enabled a numerous class of debtors having no tangible property, but who are, nevertheless, in the receipt and enjoyment of salaries and pensions, by residing in furnished apartments or with their friends, to set their creditors entirely at defiance, and consequently from whom they have now no means whatever of recovering their just demands; but besides debtors of that description, others possessing property now practise all kinds of fraudulent schemes, in order to conceal the same from their creditors.

Arrest for debt was not indiscriminately resorted to, especially by the superior courts, which almost invariably seized the property (if any) of the debtor first in preference to his person, but the fear of arrest alone generally operated beneficially in favour of the creditor, and oftentimes induced the debtor to pay, or otherwise settle with his creditors.

The power of arrest for debt in execution, even for small sums, being necessary for the reasons before-mentioned; but also, 1st, as it affords a desirable check upon the reckless proceedings of thoughtless and improvident persons; and 2ndly, as it is besides almost the only, although feeble means in the power of creditors, in conjunction with the Insolvent Debtors' court, of punishing the fraudulent and unprincipled debtor, because, in consequence of the difficulty of proof, and the flaws and uncertainties of the law, there is scarcely a chance of

obtaining redress in a criminal court, however flagrant the case may be, which is the more to be regretted, for if punishment of this kind were rendered easier and more certain of being administered, fewer cases of frauds of the worst description would then be committed. In short, the writer has himself seen the almost magical effect of even a threat of criminal proceedings in producing justice from debtors, whilst those of a merely common nature were utterly disregarded.

Notwithstanding all the many modern acts from time to time passed for improvement of the law of debtor and creditor, have been almost uniformly in favour of the former, yet it is a melancholy fact in a moral point of view alone, that the frauds committed by debtors upon their creditors in various ways, are now quite, if not more numerous, than formerly; and that the cheaper and greater the facilities are afforded to debtors to rid themselves of their legal liabilities, in the same proportion will many persons contract debts without at the same time any just or honest intention of paying, which nothing short of personal restraint will compel them, although well able—no, not even the divine injunction “to agree with thine adversary quickly;” for as Mr. Commissioner Fane, in his late excellent plan for the improvement of the law of debtor and creditor, without abolishing imprisonment for debt, states, (and the opinion of such persons in this respect, are of almost paramount importance), that “the motive which induces insolvent debtors to come forward and meet their creditors fairly, is not love of justice, nor is it a feeling of honesty; it is dread of the consequences, and the consequence which an insolvent debtor most dreads, is the seizure of his person.”

The fair retail trader has an equal right to a remedy for recovery of his small debts, as a wholesale dealer for his large ones—there are poor creditors as well as poor debtors who are entitled to equal consideration and protection—and many of whom have frequently serious difficulties in the shape of rent and taxes, and various other expenses to struggle with, in order to maintain their status, from most of which the labouring classes are entirely free. If the small creditor possessed a proper remedy for recovery of his just debts, the small debtor might obtain credit upon reasonable terms—a material benefit to the poor man—but if retail dealers have not such remedy, the prices of their commodities must necessarily correspond with the risks they run in obtaining payment thereof.

The small and unhealthy state of some of the county prisons, and the county expenses of keeping the prisoners therein, alleged as grounds for the present unjust law, affords no adequate foundation for so mischievous a measure, especially when considered with reference to the trade of this country, which is of almost paramount importance, whilst oftentimes on matters of far less moment, no expense is spared; besides, it is doubted whether the aggregate cost of the improvement of such prisons, (where

necessary,) and of maintaining the prisoners therein, would amount to a sum much exceeding that, which will be claimed as compensation by all the numerous persons entitled thereto, under the 70th section of the act; and again, as to improving some of such country prisons, it certainly would not be considered wise or proper to make anything like palaces of them, which several of the metropolitan prisons, in some respects rather resemble, because we have often heard of debtors choosing voluntarily to live luxuriously in some of the London prisons for twenty, and even for thirty years, sooner than settle with their creditors, which it may be fairly inferred they would not have done had their quarters been much less comfortable and commodious. Imprisonment is intended as punishment, and the primary object of all punishment is to prevent people from committing the same or similar crimes, for as crimes ought such perverse and dishonest conduct always to be classed; nevertheless, none but fraudulent debtors need be apprehensive of punishment from imprisonment for debt, and as to such characters, it is hoped that no reasonable human being in this christian country will attempt to deny, that they should not be subject to some punishment for their nefarious and ruinous practices, so injurious alike, whether regarded in a moral, or merely in a commercial point of view; but there are some persons who, it is said, would not seriously punish for the committing of any crime, however heinous, which it must be admitted would be a dangerous doctrine, and one that would ultimately lead to the absence of all protection for either person or property. There evidently appears to be something like a false feeling afloat in the minds of some persons upon this subject, for just the same results seem to follow the immense modern alterations and modifications of the criminal law, as those herein-before stated to be produced by the alterations in the common law. However, the author has no desire in any manner to advocate or inculcate the harsh or unnecessary punishment of either persons or animals, but merely to show the serious consequences often produced by rapid and hasty legislation from one extreme to the other, especially as we frequently find, as in this instance, that alterations are not always improvements.

It is true, that by the 59th clause of the act, power is given to the judge who should try a cause for recovery of any debt not exceeding 20*l.*, if it should appear to him that the defendant had obtained credit from the plaintiff under false pretences, or in short, had committed any of the other offences therein (which *inter alia* are hereinafter mentioned, to order that he might be taken and detained in execution in like manner and for such time as he might have been, if the act had not been made. But such clause is completely useless and inoperative for the purpose intended, as it is not probable that any defendant who had committed either of such offences, and being one of the class of debtors before described, would adopt

that course which alone would be likely to give his opponent power to punish him for so doing, whilst by saving himself the trouble and expence of defending the action, and merely suffering judgment by default, (by *nil dicit*) he might effectually disarm the plaintiff of all power over him; besides, having now no means of examining the defendant in the Insolvent Debtors' Court, the plaintiff can scarcely ever prove the committing of the offence; and, moreover, should it be the pleasure of any such defendant, in the plenitude of his power under this admirable *ex parte* act, in addition to obtaining by fraudulent means, the plaintiff's money or goods, to plead to the action for recovery of the amount thereof, (which is often done without any intention of going into court, but merely to harass an opponent,) and thereby put the plaintiff to considerable trouble and expense for his presumption in seeking to obtain his just rights, the defendant is at perfect liberty to do so with impunity, as such an offence, although punishable by the Insolvent Debtors' Court, is not once mentioned in the new act; hence the beauty of absolutely abolishing imprisonment for debt, in which case, as Mr. Fane justly observes, "no punishment will ever be inflicted on debtors"—a most gratifying announcement for thousands of debtors in this great trading community, hundreds of whom have consequently of course nobly and readily availed themselves of the legal power thus generously given them, of practically adopting the modern and moral example of American repudiation, so unjust and injurious to their creditors, and so little creditable and conducive to the honourable commercial transactions of any christian country, as well as contrary to the principle of protecting as much as possible the existing rights and interests of all classes, which we are led to believe is the primary object of all efficient legislation.

It is therefore suggested and proposed,—

1st, That the several sections of the act of last session, restraining arrest for debts not exceeding 20*l.*, should be repealed or modified as hereinafter mentioned.

2ndly, That power should be given to attach pensions, salaries, and wages.

3rdly, That all personal property in the possession or power of any debtor, should be deemed his own, as entirely as that of a trader is now adjudged by the bankrupt laws.

4thly, That the sheriff should have the same power in all cases to seize and sell such property under an execution, as commissioners of bankruptcy have now under a fiat against any trader—subject only to the strict legal rights of such *bona fide* claimants, as would now be allowed by such commissioners or other competent courts.

5thly, That all bills of sale of any goods or chattels should be registered, like warrants of attorney.

6thly, That the power of arrest for debts and demands of the same amount as formerly, should continue only under the following circumstances; for the purpose of maintaining

apparently one general uniform system for the recovery of small, as well as of large debts and demands, but chiefly for awarding, as near as possible, a just amount of punishment in cases of fraud, and all other species of unfair conduct, according to the principle and practice of the Insolvent Debtors' Court, (which the highest judicial authority in this country lately admitted—worked well and ought to be continued,) namely, obtaining credit under false pretences,—gross extravagance—wilfully contracting any debt or liability without reasonable means of paying the same—making any fraudulent gift, delivery or transfer of any personal property, or concealing property from creditors—buying goods for the purpose of turning them into money, and paying a relative or friend—harassing creditors by vexatious defences—giving insufficient explanations, and other offences cognizable by the Insolvent Debtors' or Bankruptcy Courts.

But the person of a defendant should only be liable to be arrested for any debt not exceeding the sum of 20*l.*, whenever the amount of any judgment for the same should not in a certain time be paid or realized from property, pensions, salaries or wages, (except where a defendant was about to abscond.) But that unless the plaintiff should afterwards prove by himself, his attorney or agent, to the satisfaction of a judge or some officer of the court, or of the Insolvent Debtors' Court, or if in the country of the nearest magistrate, and if in an inferior court, then to the satisfaction of such court, (if presided over by a barrister or attorney-at-law,) otherwise to a magistrate upon a summary application *ex parte* that the defendant, who should be present and examined on oath, was guilty of some or one of the offences aforesaid, as between the plaintiff and the defendant or otherwise, then the latter should at once be discharged—such discharge, however, not to be deemed a satisfaction of the judgment, but in case any such offence should be sufficiently proved, then the judge or magistrate should be empowered in any such case to award such a term of imprisonment as a commissioner of the Insolvent Debtors' Court under similar circumstances might adjudge, or as near thereto as possible, (or to leave the case to be dealt with by that court if he should think fit.)

If the law were altered in the manner or to the effect above suggested, the practical use of arrest for small debts would be materially lessened and diminished, especially in the inferior courts, as compared with the use thereof prior to the passing of the act in question, notwithstanding the prohibitory clauses thereof were repealed, provided such proposed remedies against property be made effectual, and also, because where nothing appears likely to be obtained, nor a probability of proving some matter or thing sufficient to cause a remand, few creditors (as is almost always the case) would be inclined, in addition to a loss of the debt, to incur the expense of an arrest, unless the debtors' conduct had been such as to deserve some punishment, in which case no

injustice would be committed by his suffering some few days' imprisonment.

The writer's chief aim and object has been to draw an even line between both extremes, and by suggesting such alterations in the law of debtor and creditor as appear to him to be necessary for maintaining the just rights and improving the remedies of the small *bond fide* creditor against property, as well as the person of the fraudulent and dishonest debtor, without at the same time harassing the honest and industrious man, who in consequence of losses, accidents, or other misfortunes, has become unable to discharge his just debts and liabilities; for as regards debtors of the latter description, imprisonment for debt would practically (as before mentioned) be about as much abolished then as it is now, as such persons can in various ways, through the medium of some or one of the several bankruptcy or insolvency acts, legally and effectually avoid imprisonment altogether; but even that course is seldom necessary in such cases, for the creditors of debtors who act fairly and honestly, are almost always inclined to accept of a composition on their debts without trouble or expense; hence some of the innumerable benefits and advantages of honesty and integrity in all sublunary matters, "a consummation devoutly to be wished," and although in such case Othello's occupation would, perhaps, as some suppose, be partly gone, yet it is believed that it is not the less desired by all the large respectable portion of that useful and necessary profession, of which the writer has the honour to be a very humble member.

J. B.

## REMOVAL OF THE COURTS FROM WESTMINSTER.

It appears that active measures will shortly be taken for bringing this subject again before parliament. We therefore deem it proper to remind our readers of the points urged in favour of the removal. They are as follow:—

1. The union of the law and equity courts and Masters' offices under one roof, in the neighbourhood of the inns of court, is necessary to the most efficient administration of justice.
2. The courts holding their sittings at Westminster is productive of inconvenience, delay, and expense.
3. The courts in Palace Yard are inconvenient in construction and insufficient in number and accommodation.
4. New houses of parliament can afford no increase of accommodation to the courts of law, but, on the contrary, require the site of the present courts.
5. No necessity for the courts of law being placed contiguously to the houses of parliament.

6. Situation of the courts of law affords no convenience of a public nature to the Judges and Queen's Counsel.

7. The sentiment attached by lawyers to Westminster Hall cannot be allowed to interfere with a measure of decided usefulness.

8. The present site does not afford any space for the accommodation of the new Equity Judges;

9. Nor for the three subsidiary Common Law Courts now needed for the Term, Nisi Prius, and other business;

10. Much less for any future increase of courts or judges.

11. The present plan of the Equity Vacation Sittings obliges the judges, when, for the convenience of the profession, they remove from Westminster at the end of term, to occupy, by sufferance only of the Benchers, the halls of the inns of court.

12. The necessity now presses on the government of making immediate provision for existing wants, and of considering this question in reference to the completion of the new parliament houses.

13. It is improvident to lay out money except for purposes of permanent usefulness, and without due regard to the suitors' interests, which can alone be promoted by uniting all the courts in a suitable structure under one roof, in the vicinity of Lincoln's Inn, and thereby concentrating in one neighbourhood all the places of professional resort.

14. The fact is incontrovertible, that no public necessity, nor any convenience of a public nature, justifies the evils attendant on the present site.

15. The large surplus income at present arising from the fee-funds of the Common Law Courts, and the immense unclaimed Suitors' Fund in Chancery, render it unnecessary to call on the public treasury for the expense of the building.

In November 1838 there were 2,660 attorneys in London, and 6,761 in the country;\* of the former, 1,365 (representing 5,231 country attorneys) were located about the inns of court, and 803 (representing 1,321 country attorneys) in the city. All these persons, (making, with 77 resident to the north-east, 2,245, and representing in all 6,588 country attorneys,) are obliged, each time of attending and returning from court, to travel, needlessly, three miles; and to the same proportion therefore of the profession those other and greater evils apply, which result from the courts being placed in a district remote from that of the attorney's occupations.

#### EASTER TERM EXAMINATION.

NOTICES of admission on the Roll of Attorneys have been given for Easter Term

\* These numbers are now largely increased.

by . . . . .	117 candidates
Of these there have been already examined . . . . .	29

Leaving only . . . . .	88
To which are to be added . . . . .	5
Who have given examination but not admission notices . . . . .	—
The number for examination therefore is . . . . .	93

The examiners have appointed Tuesday, the 29th April, inst., at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before Tuesday, the 22nd April, at the Law Society.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—  
1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry—*Common Law* and *Equity* being two thereof.

#### TAXATION OF SOLICITORS' BILLS.

VARIOUS questions have arisen in carrying into effect the clauses in the Attorney and Solicitors' Act, 6 & 7 Vict. c. 73, relating to the taxation of costs. It will be recollected that after the bill was brought in by the Master of the Rolls numerous amendments were suggested, particularly in regard to the delivery and taxation of bills of costs. The 37th clause was much extended, and others were added. In fact the subject has become extremely complicated, and some time must unavoidably elapse before the questions on the construction of the act, which are brought before the courts, are finally set at rest. Most of these points come before the Master of the Rolls, and every one who has read his lordship's decisions must be satisfied that all due regard has been paid to the rights of the practitioner,



consistently with justice to the suitor, and the proper construction of the statute.

In the orders for the taxation of solicitors' bills, several circumstances have to be considered: 1st, Whether the bill has been delivered according to the act. 2nd, Whether the application to tax is made within a month after the delivery. 3rd, Whether, after the expiration of a month, and before the lapse of twelve months, there shall be any and what conditions. 4th, After an action has been brought, and before verdict. 5th, After twelve months, what are the special circumstances under which a taxation will be ordered. 6th, After payment of a bill, and within twelve months, what are the special circumstances which will induce the court to direct a taxation; and doubts also have arisen as to what constitutes a payment.

Besides all these questions, which apply to a bill between solicitor and client, there are other classes of questions under the 38th and 39th clauses: the 38th relating to bills taxable on the application, not of the client, but of third parties, such as mortgagors, lessees, &c.; and the 39th relating to the taxation of bills chargeable to trustees, executors, and administrators. Numerous points occur in both these classes of cases.

On the present occasion our remarks will be confined to the cases in which orders are granted as of course to tax bills under the 37th section of the act.

The Master of the Rolls has decided that in order to entitle a party to tax his solicitor's bill, the bill need not have been signed or delivered with any of the formalities required by the act, but that a bill delivered or sent to the client may be taxed as of course, although neither signed nor accompanied by a letter referring to it. *In re Pinder*, 10 April, 1845.

In our last number, (p. 448,) we reported the decision in the case *ex parte Gaiskell*, in which it was decided that although more than a month may have elapsed since the delivery of a solicitor's bill, an order may be obtained for taxing it, without notice to the solicitor. The Master of the Rolls, besides the common order which is granted on application made within the month, has settled a form of order by which the party applying to tax after the expiration of a month from delivery of the bill, is put upon terms to procure the Master's report within a month, unless the Master should certify that further time is necessary to enable him to

make his report, otherwise the order to tax has no effect.

This seems to be a sufficient protection to the solicitor. He may bring an action immediately after the month has expired, and then, if application be made to tax the bill, an order of reference is granted, imposing different terms for his protection and benefit. If he should not bring such action, and an order to tax be made, he is then delayed only a month by the taxation, and in the interim may of course make any special application which the circumstances warrant. We think (especially when it is borne in mind that these orders operate as judgments) that this is the best mode of proceeding that could be adopted, as well for the solicitor as the client. It is beneficial to both parties to save the expense of a trial, and if after the expiration of a month from the delivery of a bill it were necessary to present a special petition to be heard in the usual way, the average expense of the hearing and reference would be 30*l.*, and if more than a sixth were taken off the bill, (however small in amount it might be,) this expense would fall on the solicitor. At common law the practice is different, as the application to tax is heard on summons at the judge's chambers, and such terms are made as the circumstances may require, at a very small expense. This is one of the reasons for the difference of practice. There are others, to which it is unnecessary to advert, but which will probably suggest themselves to the profession.

We have obtained copies of the several forms of orders, which are used according to the circumstances of the case; and we learn that not only the officers of the court, but several practitioners, were consulted when the orders were settled, and it is evident that great care and consideration have been bestowed in adapting the orders to the nature of each class of cases.

The following are the

#### FORMS OF ORDERS.

*Form of order on application, made within a month after delivery of bill.*

The day of in the  
year of the reign of her Majesty Queen  
Victoria, 184 .

In the matter of A. B., one of the solicitors of this court.

Upon the humble petition of C. D., this day preferred unto the Right Honourable the Master of the Rolls, It was alleged that the petitioner employed the above-named A. B. as

his solicitor in [here the nature of the business is stated]

That the said on or about the day of delivered to the petitioner, his bill of fees and disbursements, which, as the petitioner is advised, contains many unreasonable and extravagant charges, that the petitioner submits to pay what shall appear to be due to the said said bill. It was therefore prayed, and it is accordingly ordered, that it be referred to the Taxing Master of this court in rotation, to tax and settle the said bill. And it is ordered that the petitioner, and also the said do produce before the said Master upon oath, as he shall direct, all books, paper, and writings in custody or power respectively relating to the matters hereby referred or any of them, and that they be examined upon interrogatories touching the same matters or any of them, as the said Master shall direct. And it is ordered that the said

do give credit for all sums of money by received of or on account of the petitioner, and that he be at liberty to charge all sums of money paid by to or on account of the petitioner. And it is ordered, that if such bill when taxed be less by a sixth part than the said bill so delivered, the said Master do tax the petitioner costs of such reference. And if such bill when taxed shall not be less by a sixth part than the said bill so delivered, that the said Master do tax the said costs of such reference. And it is ordered, that the said Master do certify the amount due from the petitioner to the said or from the said to the petitioner, as the case may be, having regard to the costs of such reference so to be taxed as aforesaid, and any sum or sums of money which may have been so received or paid as aforesaid. And it is ordered, that the amount so to be certified be paid accordingly, unless the court shall upon special circumstances to be certified by the Master, otherwise order upon application to be made within one week after the date of the said Master's certificate by the party liable to pay such amount. And it is ordered, that upon payment to the said of what may be certified to be due to as aforesaid, or in case it shall appear that there is nothing due to the said he, the said do deliver to the petitioner upon oath, all deeds, books, papers, and writings in custody or power belonging to the petitioner. And it is ordered, that no proceedings at law be commenced against the petitioner in respect of the said bill pending such reference.

If application made after expiration of a month, and within twelve months.

The day of in the year of the reign of her Majesty Queen Victoria, 184 . In the matter of Upon the humble petition of

this day preferred unto the Right Honourable the Master of the Rolls, it was alleged that the petitioner employed the above named in [here the nature of the business is stated]

That the said day of on or about the delivered unto the petitioner bill of fees and disbursements which as the petitioner advised contain many unreasonable and extravagant charges That the petitioner submit to pay what shall appear to be due to the said on the taxation of said bill.

It was therefore prayed, and it is accordingly ordered, that it be referred to the Taxing Master of this court in rotation to tax and settle the said bill, and that the petitioner, and also the said

do produce before the said Master upon oath as he shall direct, all books, papers, and writings in their custody or power respectively relating to the matters hereby referred, or any of them. And that they be examined upon interrogatories touching the same matters, or any of them, as the said Master shall direct. And it is ordered that the said do give credit for all sums of money by him received of or on account of the petitioner. And that he be at liberty to charge all sums of money paid by him to or on account of the petitioner. And it is ordered that if such bill when taxed be less by a sixth part than the said bill so delivered, the said Master do tax the petitioner costs of such reference. And if such bill when taxed shall not be less by a sixth part than the said bill so delivered, the said Master do tax the said costs of such reference. And it is ordered, that the said Master do certify the amount due from the petitioner to the said or from the said

to the petitioner, as the case may be, having regard to the costs of such reference so to be taxed as aforesaid, and any sum or sums of money which may have been so received or paid as aforesaid. And it is ordered, that the amount so to be certified be paid accordingly, unless the court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate, by the party liable to pay such amount. And it is ordered that, upon payment by the petitioner to the said of what may be certified to be due to him as aforesaid, or in case it shall appear that there is nothing due to the said he the said

do deliver to the petitioner upon oath all deeds, books, papers, and writings in custody or power belonging to the petitioner. And it is ordered, that no proceedings at law be commenced against the petitioner in respect of the said bill pending such reference, but the petitioner to procure the said Master's report in a month, (unless the said Master shall certify that further time is necessary to enable

him to make his report,) or this order is to be of no effect.

*After action brought and before verdict, or Writ of Inquiry.*

The day of in the  
year of the reign of her Majesty Queen  
Victoria, 184 .

In the matter of

Upon the humble petition of  
this day preferred unto the Right Honourable  
the Master of the Rolls, it was alleged that  
the petitioner employed the above-named

That the said on or about the  
day of delivered unto the  
petitioner bill of fees and disburse-  
ments, which, as the petitioner advised,  
contain many unreasonable and extravagant  
charges. That the said hath commenced  
an action at law against the petitioner, to re-  
cover the amount of the said bill, but no verdict  
hath been obtained, nor hath any writ of in-  
quiry been executed in such action. That the  
petitioner submit to pay what shall appear to  
be due to the said on the taxation  
of said bill.

It was therefore prayed, and it is accordingly  
ordered, that it be referred to the Taxing  
Master of this court in rotation to tax and settle  
the said bill, and that the petitioner, and also  
the said  
do produce before the said Master upon oath  
as he shall direct, all books, papers, and writ-  
ings in their custody or power respectively  
relating to the matter hereby referred, or to  
any of them. And that they be examined upon  
interrogatories touching the same matters or  
any of them, as the said Master shall direct.  
And it is ordered, that the said  
do give credit for all sums of money by him  
received of or on account of the petitioner.  
And that he be at liberty to charge all sums  
of money paid by him to or on account of  
the petitioner. And in case it shall appear  
that there is anything due from the petitioner  
to the said

It is  
ordered, that the said Master do tax the said  
his costs of the said action at law,  
and that such costs when taxed be added to  
the amount which shall be so found to be due.  
And it is ordered, that if such bill when taxed  
be less by a sixth part than the said bill so  
delivered, the said Master do tax the petitioner  
costs of such reference. And if such  
bill when taxed shall not be less by a sixth  
part than the said bill so delivered, the said  
Master do tax the said  
costs of such reference. And it is ordered, that  
the said Master do certify the amount due from  
the petitioner to the said  
or from the said

to the petitioner, as the case may be, having  
regard to the costs of such reference so to be  
taxed as aforesaid, and any sum or sums of  
money which may have been so received or  
paid as aforesaid. And it is ordered, that the

amount so to be certified be paid accordingly,  
unless the court shall, upon special circum-  
stances to be certified by the said Master,  
otherwise order, upon application to be made  
within one week after the date of the said  
Master's certificate, by the party liable to pay  
such amount. And it is ordered, that upon  
payment by the petitioner to the said  
of what may be certified to be due to him as  
aforesaid, or in case it shall appear that there  
is nothing due to the said  
he the said

do deliver to the petitioner upon oath all deeds,  
books, papers, and writings in custody  
or power belonging to the petitioner. And it  
is ordered, that all further proceedings at law  
against the petitioner in respect of the said bill  
be stayed pending such reference, but the peti-  
tioner to procure the said Master's  
report in a fortnight, (unless the said Master  
shall certify that further time is necessary to  
enable him to make his report,) or this order is  
to be of no effect. And in case the said Mas-  
ter shall not certify any special circumstances  
in his said report, and shall certify that there is  
anything due from the petitioner to the said

It is ordered that the amount so to  
be certified be paid by the petitioner to the  
said and in default of such payment  
being made the said is to be at liberty  
at any time within two days from the filing of  
the said Master's report, (without service of  
this order or of the said report,) to sue out  
execution against the petitioner by *feri facias*,  
writ of *elegit* or otherwise, for the amount  
which may be so certified to be due as afore-  
said.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Rolls Court.

[Reported by SAMUEL MILLER, Esq., Bar-  
rister-at-law.]

PRACTICE. — EVIDENCE. — AFFIDAVIT. —  
FEME COVERT.

*On an application for payment of money out  
of court to a party becoming entitled on his  
attaining 21, the affidavit of identity must  
expressly refer to the certificate of baptism,  
if any such certificate be used.*

*If the application be made on behalf of a mar-  
ried woman, proof must be given of no  
settlement having been executed, although  
the sum in question be only 50l.*

THIS was a petition for the transfer out of  
court to the petitioners, one of whom was a  
married woman, of certain monies belonging  
to them. In order to prove the baptism of  
the parties, certificates were produced and pro-  
perly verified; but the affidavits of identity not  
being made by the same person who deposed  
to the certificates, instead of identifying the

petitioners or the parties named in the certificates, stated them to be the parties named in the affidavit of the deponent who proved the certificates.

One of the parties was also a married woman, and, the sum being only 50*l.*, the usual affidavit of no settlement having been executed was not filed.

*Beavan*, for the petitioners, submitted that as the identity was traced through the affidavits made in proof of the certificates, the evidence was sufficient; and with regard to the question of settlement, that as the sum was so small, the court might safely dispense with an affidavit upon that point.

The *Muster of the Rolls* said he did not think that he ought to relieve a party from the ordinary rules when it was so easy to comply with them. The affidavit of identity should prove the party in the cause to be the party named in the certificate; and the affidavit of no settlement having been executed was just as much required where the application was for the payment of a small as a large sum.

*In re Karr*, Jan. 21, 1845.

### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, ESQ., Barrister at Law.]

#### JOINT STOCK COMPANY.—SALE OF SHARES.

*A sold shares in a public company to B. By the laws of that company, the consent of the directors was required to be given before any sale of shares could be valid for the purpose of passing the property in them. A did not procure the assent of the directors, but he did all the other acts necessary for the transfer of the shares. In consequence of the want of this assent, B never actually obtained possession of the shares. Held, that he could maintain money had and received against A for the price he had paid for these shares, and the fact that he brought such action without first returning the documents which A had executed in order to transfer the shares, would not prevent him from recovering.*

THIS was an action for money had and received. The plaintiff and defendant were both members of a joint stock company, called the Durham County Coal Company. The plaintiff, a short time ago, purchased of the defendant ten shares in this company, and paid the money, but the shares were never completely transferred to him according to the laws of the company. The company was incorporated under an act of parliament. There were several clauses in the act regulating the mode in which shares were to be transferred. By sections 14 and 142 it was provided, that before there could be any final transfer of the shares, it was requisite that there should be an agreement between the vendor and vendee, the name

of the vendee was then to be submitted to the directors, and the transfer was to be approved of by two directors, before the vendee could become a proprietor in the company. An agreement was made between the plaintiff and the defendant for the transfer of these shares, and the defendant executed, so far as he could, transfers of them; but the approval of the directors was never obtained to these transfers, so as to give the plaintiff possession of the shares. The case was tried at York, before Mr. Justice Wightman, when a verdict was found for the plaintiff, with leave reserved for the defendant to move to enter a nonsuit. A rule was obtained on three grounds: 1, That the action for money had and received would not lie, because the contract was still open; the action therefore should have been on the special contract. 2, That the defendant was not the party to blame, because he had done all in his power to procure the assent of the directors for the transfer of the shares. 3, That the plaintiff had another remedy, and might have compelled the directors to give their consent by a writ of mandamus.

Mr. Martin and Mr. Cowling, for the plaintiff.

The defendant is the person who sells these shares, and he is the person who is called upon to perfect the contract, he must therefore obtain the consent of the directors for the completion of the transfer of the shares before he has discharged his duty, and before the plaintiff can obtain a legal title to them. In the case of a lease which contains a covenant not to assign, it has been held to be incumbent on the vendor of the lease, and not on the purchaser, to procure the lessor's license for the assignment. *Lloyd v. Crispe*.<sup>a</sup> The principle of that case is applicable in the present instance. The purchaser has no power to compel the directors by mandamus to give their consent, because the court will not grant a mandamus under such circumstances. In *Re v. the Bank of England*<sup>b</sup> the court refused a mandamus to the bank to transfer stock. In *Re v. the London Assurance Company*<sup>c</sup> the court refused a mandamus to the directors of a private trading corporation to permit a transfer of stock to be made in their books.

The procuring of the assent of the directors was a condition precedent to be performed by the defendant; and inasmuch as that condition has not been performed, the plaintiff has paid money without any consideration, and can recover it back as money had and received. The plaintiff has received no benefit from the contract, which is the general test to be applied in such cases. It is said that the contract is still open, and may be completed at any time; but the act of bringing the action annuls the contract on the part of the plaintiff, and prevents him from availing himself of the contract, even if the directors gave their consent immediately afterwards.

<sup>a</sup> 5 Taunt. 249.

<sup>b</sup> 2 Doug. 523.

<sup>c</sup> 5 B. & Ald. 899.

*Kempson v. Saunders*,<sup>d</sup> *Young v. Cole*,<sup>e</sup> *Scurfield v. Gowland*.<sup>f</sup>

Mr. Knowles and Mr. Addison for the defendant.

The defendant was only called upon to do all in his power to obtain a perfect transfer of these shares; his inability to obtain the consent of the directors, and to complete the purchase, did not arise from any fault on his part. The value of the shares has decreased since the money was paid, and the defendant, if this action succeeds, will be made to suffer a loss in a case where he is not to blame. [Mr. Justice Coleridge.—Do you contend that the defendant could bring an action for the value of these shares, if the money had not been paid?] That may be contended, and the agreement is intended to go to that extent. *Salter v. Woliams*.<sup>g</sup> The plaintiff has his remedy either by mandamus or by bill in equity.

The action for money had and received is misconceived; the action should have been on the special contract, which still remains open. He still possesses the transfers executed by the defendant, and the assent of the directors will put him in actual possession of the shares. It is in the power of the plaintiff at any time to obtain the consent of the directors, and by so doing make a complete title to the shares. In *Hunt v. Silk*,<sup>h</sup> Lord Ellenborough, C. J., says, "Where a contract is to be rescinded at all, it must be rescinded *in toto*, and the parties put in *statu quo*." They are not here on equal terms, for the plaintiff has retained the incomplete transfers, and has to this extent possessed himself of the property, which he has never returned. The parties are not placed in *statu quo*, and the plaintiff cannot rescind the contract without the consent of the other contracting party. The defendant is an innocent party, and no default has been committed by any act on his part. *Taylor v. Hare*.<sup>i</sup>

*Cur. ad. vult.*

Mr. Justice Coleridge now (March 1, 1845,) delivered judgment.—In this case the plaintiff bought from the defendant certain shares in the stock of a public company, and everything was done which was necessary for the purpose of completely transferring the property to the plaintiff, except entering upon the books of the company the assent of the directors to the transfer of the shares. This assent it was, however, found impossible to procure, in consequence of a dispute between the defendant and the directors. As the transfer of the property could not therefore be completed, the plaintiff was never put in possession of the shares, and never became the strict legal owner of them, and he brought this action to recover back the purchase money, upon the ground that it had been paid upon a consideration which had failed altogether. Before bringing the action he did not return the uncompleted transfers which he

had received from the defendant. A verdict was returned for the plaintiff, and a rule nisi for a new trial was afterwards obtained upon the part of the defendant, and argued subsequently in court. Upon the part of the defendant, it was urged in the argument that he had done all that it was in his power to do for completing the transaction; that he had no means to compel the directors to assent to the transfers; and that the shares in question had, since the time of the bargain, fallen considerably in the market, so as to render it impossible, if the contract should be rescinded, to replace the parties *in statu quo*; and at any rate that the plaintiff, before he could maintain an action, ought to return the transfers which he had received from the defendant. With regard to the first point, the court is of opinion that it was the duty of the defendant to produce the assent of the directors to the completion of the contract, and to do all that was necessary to be done to complete it. This case resembles that of the sale of a lease of a house, in which the purchaser has a right to require the seller to give him possession of the thing purchased; and if the seller does not perform this part of the transaction, the consideration fails, and the purchaser may recover back the purchase money. As to the argument raised upon the difference in the price of the shares at the time of the contract and of the action brought, the answer is, that the plaintiff never had the shares; he cannot therefore be said to have been possessed of the property, nor charged now with a desire to return it when it has fallen in value. The shares were never in his possession, and he therefore has never received any part of the consideration for which he paid his money; he is consequently entitled to recover back that money as money paid without consideration. As to the last objection, we have felt some doubt, but as the documents executed by the defendant had no force of themselves to give the plaintiff possession of the thing he intended to purchase, we think that the simple fact of retaining them is not of itself sufficient to bar his right of action. These transfers were incidental to the possession of the shares,—they did not give the possession, they were only collateral to the possession, and we think that as the defendant did not procure the assent of the directors, and thus render them really valuable by obtaining for the plaintiff the possession of the shares, the right of action accrued, and that it is not barred by the retaining by the plaintiff of that which was a mere incident to the possession of the shares themselves. The case of *Scurfield v. Gowland* is in accordance with this view of the question. The rule in this case, and in the similar case of *Leman v. Lloyd*, will therefore be discharged.

Rule for the nonsuit discharged.

*Wilkinson v. Lloyd*.<sup>1</sup> Sittings in banco, after Hilary Term, 1845.

<sup>d</sup> 4 Bing. 5.

<sup>e</sup> 3 Bing. N. C. 724. <sup>f</sup> 6 East. 241.

<sup>g</sup> 2 Man. & Gran. 650.

<sup>h</sup> 5 East. 452.

<sup>i</sup> 1 New Rep. 260.

<sup>1</sup> 6 East, 241.

<sup>1</sup> This case was argued in Trinity Term, 1844.

Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH Esq., Barrister at Law.]

PRISONER.—DAMAGES UNDER 20*l*.—MOTION TO DISCHARGE.

*A party who has been in prison in execution for twelve calendar months for the nominal damages of 1*s*. and for the costs in ejectment, is entitled to his discharge under the 48 Geo. 3, c. 123, s. 1.*

*Giffard* moved to discharge a prisoner out of custody, under the 48 Geo. 3, c. 123, s. 1, which enacts that all persons in execution upon any judgment for any debt or damages not exceeding the sum of 20*l*. exclusive of costs, &c., and who shall have been in prison for more than twelve calendar months before the application, shall be discharged by the rule or order of one of the superior courts.

*Barstow* showed cause in the first instance, and contended that a judgment in ejectment was not within the act. He relied upon the authority of *Doe v. Reynolds*,<sup>a</sup> where it was held that a party who was in custody for the costs of an ejectment under 20*l*. was not entitled to his discharge under this act. No doubt it was held in *Doe d. Daffey and others v. Sinclair and another*,<sup>b</sup> that a party in prison under such circumstances was entitled to his discharge; and *Doe d. Threlfall v. Ward*<sup>c</sup> is to the same effect. But it has never been so decided in this court. And in the latter case *Doe v. Reynolds* was not cited. [*Wightman, J.*—It seems to have been there considered that the defendant was in execution for the costs only.] The distinction taken by Lord *Tenterden, C. J.*, shows that the decision proceeded on the nature of the action itself. His lordship says: "The object of a party instituting such a proceeding is to recover the possession of land, and not any debt or damages." The 1*s*. damages in ejectment recovered for the detention of the supposed term rests upon a fiction. [*Wightman, J.*—Suppose a party recovers a shilling damages in trover.] Then it is a real transaction. [*Wightman, J.*—Or suppose he should recover 15*l*. damages in the ejectment, which he might do. How is the distinction to be drawn?] Nothing is recovered here but 1*s*. damages for the loss of the supposed term.

*Giffard*, contra, was not heard.

*Wightman, J.*—Ejectment is an action for damages as well as costs. There is no doubt such a judgment is within the act.

Rule absolute.

*Doe d. Barker v. Roe.* Q. B. P. C. Hilary Term, 1845.

<sup>a</sup> 10 B. & C. 481.    <sup>b</sup> 3 Bing. N. C. 778.  
<sup>c</sup> 2 M. & W. 65.

COMMON LAW CAUSE LISTS.

Easter Term, 1845.

Queen's Bench.

New Trials remaining undetermined at the end of Hilary Term, 1845.

Michaelmas Term, 1842.

Essex.—Corporation of Colchester v. Brooke.

Easter Term, 1844.

Kent.—Allen v. Hayward.  
Bucks.—Doe d. Brise v. Brise.  
Cambridge.—The Queen v. Mortlock.  
Chester.—Wharton v. Walton; Worthington, administrator, &c. v. Grimsdith, M. P.  
Stafford.—Bromley v. Spurrier.  
Gloucester.—Holford, Esq. v. Bailey, Esq.; Green v. Pryce and others.  
Hants.—Doe d. Edney and others v. Wise.  
Devon.—Mayor, &c. of Saltash v. Finnymore; Woolcombe v. Sleenan.  
Somerset.—Gale v. Bernal.  
Northampton.—Simons v. Spier.  
Lincoln.—Mayfield v. Robinson; Doe d. Swinton v. Cook.  
Notts.—Spencer v. Carlen.  
Derby.—Roe d. Ververs v. Ault; Winterbottom v. Ingham.  
Warwick.—Elliott v. Blackwall.  
Carlisle.—Topping v. Hayton.  
York.—Doe d. Corporation of Richmond v. Morphet; Gibson v. Call and others; Adams, a pauper, v. Hartley; Ferrand v. Milligan; Dawson v. Gregory.  
Liverpool.—Weber v. Preller; Hargreaves and another v. Wood and another; Pow v. Taunton and another; Aikin v. Faith and others.

Tried during Easter Term, 1844.

Middlesex.—Littlechild v. Banks; Brooks v. Bockett; Same v. Same; Skilbeck and another v. Garbett.

Trinity Term, 1844.

Middlesex.—Harrison v. Varty and another; Same v. Same; Gladman v. Plumer.

Tried during Trinity Term, 1844.

Middlesex.—Mercer v. Bartlett; Croucher v. Currie and another; Moses v. Jacobson.

Michaelmas Term, 1844.

Middlesex.—Belcher and others v. Gummow; Macarthy v. Varty and another, (to come on for argument with Harrison v. Varty, Trinity Term;) Same v. Same; Bennett v. Duncan; De Medina v. Grove and others; Same v. Same; The Queen v. Waller.

London.—De Freis v. Littlewood and another; Exley v. Tussell; Bodmer v. Butterworth and another.

Northampton.—Sutton, a pauper v. Macquire.

Notts.—The Queen v. Inhabitants of Hickley.

Leicester.—Wood v. Dixie, Bt.

Warwick.—Cooper v. Harding and another; Same v. Same.

Hants.—Doe d. Edney and others v. Benham;

Same v. Billett.

Devon.—Doe d. Clarke v. Smarridge; Dovill v. Jevé; Schank v. Beard.

*Cornwall*.—Richards v. Symons.  
*Somerset*.—Atwood v. Jolliffe and another; Doe d. Earl of Egremont v. Langdon; Alford v. Ashford.

*Bristol*.—Gale v. Lewis.

*Norfolk*.—Corporation of Thetford v. Tyler.

*Denbigh*.—Oldfield v. Dalrymple.

*Chester*.—Collier v. Clarke and another.

*Oxford*.—Exeter College v. Butler and others, in trespass.

*Worcester*.—Doe d. Blayney v. Savage and another; Bate and another v. Blurton and another, executors, &c.

*Stafford*.—Hilton v. Earl Granville.

*York*.—The Queen v. Rd. Clearby; Lockwood v. Wood; Musgrove v. Emerson.

*Durham*.—Elliott and another v. Stobart and others; Wilson v. Anderson.

*Westmoreland*.—Webster v. Wilson.

*Liverpool*.—The Queen v. Corporation of Manchester; Wharton v. Wright; The Queen v. Liverpool and Manchester Railway Company.

*Essex*.—Doe d. Copland and others v. Burrell; Doe d. Cozens v. Cozens.

*Kent*.—Bracegirdle v. Peacock and another; Doe d. Jacobs v. Phillips and others.

*Surrey*.—The Queen v. Sewell.

*Glamorgan*.—Burgess v. Taff Vale Railway Company.

*Pembroke*.—Doe d. Butler and others v. Lord Kensington and others.

*Radnor*.—Doe d. Woodhouse v. Powell.

*Tried during Michaelmas Term, 1844.*

*Middlesex*.—Paine v. Guardians of Strand Union.

*Hilary Term, 1845.*

*Middlesex*.—Hill v. Stratford; Wood v. Williams and another; Stinton v. Bloxham and another; Hope v. Harman and others; Davis v. Curling.

*London*.—Henzell v. Hocking and another, sued, &c.; Bingley v. Young; Hayne v. Rhodes and others; Daniel v. Pedding; Thompson v. Thorn and others; Nutt v. Abrahams; Lowe v. Penn.

*Tied during Hilary Term, 1845.*

*Middlesex*.—Edden v. Brown; Hill and another v. Kendall; Parnell v. Smith and another; Same v. Same.

#### SPECIAL CASES AND DEMURRERS.

*Easter Term, 1845.*

Harris v. Reynolds, dem.

Fargeter and others v. Harris, dem.

Perry v. Fitz Howe, dem.

Green and another, assignees, &c. v. Wood and another, special case.

Ekin and another v. Flay, special case.

Prothero v. Phelps, dem.

Nortimore v. Moore and another, dem.

Gregory v. East India Company, dem.

Miles, Treasurer, &c. v. Bough, dem.

Scarpellini v. Aitcheson, dem.

Orgar v. Horne, dem.

Doe d. Wood and another v. Clarke, special case.

The St. Katherine Dock Company v. Higgs, special case.

Hamner v. Eyton, case from new trial paper.

Kennett and Avon Canal Navigation v. Gt. Western Railway Company, special case.

Faunin v. Anderson, dem.

Tece v. Brown and others, in replevin, dem.

Robinson v. Marchant, dem.

Elwell v. Birmingham Canal Company, special case.

Nicholls v. Stretton, dem.

Peake v. Screech, dem.

Belcher and others, assignees, &c. v. Campbell and another, special case.

Selby v. Brown, dem.

Edmunds v. Penneger and others, dem.

Doe d. Dand v. Thompson, special case.

Vine v. Bird, dem.

Taylor v. Stendall, dem.

Mayor, &c. of Litchfield, v. Simpson, dem.

Wrightup v. Greenacre, dem.

Clarke and others v. Tinker, special case.

Filkinhorn v. Wright, dem.

Nicholas v. Wright, dem.

Boulet v. Maire, dem.

Thorogood v. Robinson the elder, dem.

Ward and others v. London and Blackwall Railway Company, dem.

Simons v. Lloyd, dem.

Faviell v. Manchester, Bolton, and Bury Canal Navigation Co., special case.

Gosling v. Veley and another, dem.

Roe dem. Jackson and others v. Hartshorn and others, special case.

Page v. Hatchett, dem.

Brutton v. Shevill, dem.

Ricketts v. Loftus, dem.

Young and another v. Tagg, dem.

Simons v. Lloyd, dem.

Taylor v. Clay and another, dem.

Lomas v. Ashworth, special case.

Lawrie, Knt., and others v. Hoast, dem.

Chaurier v. Cummings, special case.

Hutt v. Morrell and another, dem.

Blakeley v. Smaltwood and another, executors, dem.

Short v. Stone, dem.

Burdock v. House, dem.

Rumball and another v. Munt, special case.

Wakefield and another v. Brown, dem.

Binson v. Staunton and another, dem.

Oliverston and another v. Brightman and others, special case.

Bold and another v. Rotherham, special case.

#### Common Pleas.

*Remanet Paper of Easter Term, in the 8th year of the reign of Queen Victoria, 1845.*

#### Enlarged Rules.

To 1st day.—Cattlin v. Brooks.

To 6th day.—Tolson v. Bishop of Carlisle and others.

*New Trials of Hilary Term 1844.*

*Middlesex*.—Coxhead v. Richards.

*New Trials of Michaelmas Term last.*

*Surrey*.—Blackham v. Pugh.

*Gloucester*.—Wilkes v. Hopkins and others.

*Notts*.—Cocking v. Ward.

*Iwarwick*.—Fowler v. Russell.

*Durham*.—Charlton and another v. Gibson.

*Liverpool*.—Bentley v. Fleming; Williamson v. Page.

*Suffolk*.—Lewis, executor, v. Bailey.

*Chester*.—Davies v. Aston, Knt.

*New Trials of Hilary Term last.*

*Middlesex*.—Burgess v. Gray; Bentley v. Carter and others; Webb v. Beavan and others; Same v. Same; Gould v. Coombs.

*London*.—Valpy and others v. Manley; Conway and others v. Hall; Enthoven and another v. Irving and others.

## CUR. AD VULT.

Walker v. Petchell.  
Abbott v. Douglas.

## Appellant Case.

*Yorkshire*.—Baxter, (appellant) v. Newman, (respondent.)

*Demurrer Paper of Easter Term, 8th year of the reign of Queen Victoria, 1845.*

Tuesday . April 15	} Motions in arrest of judgment.
Wednesday . . 16	
Thursday . . . 17	
Friday . . . 18	
Wednesday, . . 23	Special arguments.

Pims v. Grazebrook and another.  
Cumberledge and others v. Smither.

Same v. Bucknell.  
Salkeld v. Johnson.  
Phillips and another v. Smith.  
Doe (Stevenson) v. Glover.  
Glynes and others v. Lawrence.

Stead v. Carey.  
Friday, April 25. Special arguments.  
Wright v. Tallis and another.  
Wednesday, April 30. Special arguments.  
Friday, May 2. ditto.

## Exchequer of Pleas.

## SPECIAL PAPER.

For Easter Term. 8 Vict., 1845.

## For Judgment.

Baron v. Denman, Esq., dem.  
(Heard 13th Nov. 1844.)

## For Argument.

Martinez v. Denman, Esq., dem.  
Jimenez v. Same, dem.

(These two cases to stand over until judgment given in Burrow v. Denman, Esq.)

Doe d. Sams v. Garlick, special case, by order of Mr. Baron Rolfe.

*Part heard, 27th Jan. 1845.*

The Company of Proprietors of the Calder and Hebble Navigation v. Pilling and others, dem.  
Thomas v. Hudson, dem.  
Fisher and others v. Gibbon, dem.  
Williams et ux. v. Waters, executor, &c., dem.  
Smale v. Franchi, dem.  
Piper and others, The Master and Wardens, &c. v. Chappell, dem.  
Simmons v. Haslett, dem.  
Hodgins v. Cook, sued with Hancock, dem.  
Aston v. Brevith, dem.  
Turner v. Masno, dem.  
Jones v. Chapman, dem.  
Surman and others v. Darley and others, special case, by order of Mr. Baron Rolfe.  
Watson, Cashier, &c. v. Earl of Egremont, dem.  
Beadle v. Snelling, dem.  
Wiggins and another v. Johnston, special case, by order of Mr. Baron Alderson.  
Wrightson v. Macauley, special case, by order of Vice-Chancellor Wigram.  
Miller and another v. Large, dem.

## NEW TRIAL PAPER.

For Easter Term. 8th Vict. 1845.

## For Judgment.

(Moved Easter Term, 1844.)

*Liverpool*, Mr. Baron Rolfe.—Rogers and another v. Maw.

(Heard 28th May, 1844.)

*Moved Michaelmas Term, 1844.*

*Middlesex*, Lord Chief Baron.—Chappell v. Purday.

(Heard 15th and 23rd Nov. 1844.)

*Middlesex*, Mr. Baron Rolfe.—Bartlett v. Diamond.

(Heard 23rd and 29th Jan. 1845.)

*Northampton*, Mr. Justice Colman.—Watson v. Bodell.

(Heard 21st Feb. 1845.)

## For Argument.

*Moved Trinity Term, 1844.*

*London*, Lord Abinger.—A. J. Acraman v. Cooper and others.

24th Jan. 1845. This rule further enlarged until 2nd new trial had in W. E. Acraman v. Cooper and others.

*Moved Michaelmas Term, 1844.*

*Middlesex*, Mr. Baron Alderson.—Russell v. Ledsam and others.

*London*, Lord Chief Baron.—Redman v. Wilson.  
(12th Feb. 1845, part heard.)

*London*, Lord Chief Baron.—Redman v. Hay.  
*Mold*, Mr. Justice Coleridge.—Doe d. Lloyd v. Ingleby.

*Liverpool*, Mr. Justice Cresswell.—Crellin v. Calvert; Crellin v. Brooke.

*Ipswich*, Mr. Justice Williams.—Mills v. Goff.  
(Feb. 15th, part heard.)

*Warwick*, Lord Denman.—Geach and others, assignees, &c. v. Ingall.

*Worcester*, Mr. Serjeant Atcherly.—Benbow v. Jones; Biss v. Arkell.

*Devizes*, Mr. Justice Wightman.—Hayward v. Hayward; Frude et ux. v. Powell.

*Bristol*, Mr. Justice Paterson.—Fargues v. Bradshaw; Kynaston and another, assignees, &c. v. Crouch; Doran and another, assignees, &c. v. Worboys.

Moved after the 4th day of Michaelmas Term, 1844.

*Middlesex*, Lord Chief Baron.—Hogarth v. Penny and another; Birt v. Leigh.

Moved Hilary Term, 1845.

*Middlesex*, Lord Chief Baron.—Skinner v. Hart; Baildon, executors, &c. v. Walton; Same v. Same; Eglinton v. Ruck and others; Parnell v. Williams and others; Belcher and others, assignees, &c. v. Magnay and others; Same v. Same; Richards v. Macey; Sherborn v. Aylieff; Whitmore and others, assignees, &c., on affidavits, v. Hind; Davey v. Warne; Playfair v. Musgrove and another; Surfing v. Ovenden and others.

*London*, Lord Chief Baron.—Newall v. Webster and others; Hawley v. Gilbert; Bevan and wife v. Messer and wife; Stapleton v. Baker.

Moved after the 4th day of Hilary Term, 1845.  
*Middlesex*, Mr. Baron Rolfe.—Curlews v. Page, on affidavits; Woodbridge v. Cooper.



**Peremptory Paper.***For Easter Term. 8 Vict. 1845.*

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary before the motions.

4th June, 1844.—The Mayor, Aldermen, and Burgesses of the Borough of Ludlow, in the county of Salop v. Charlton, Esq.

15th January, 1845.—Hagger v. Baker.

**COMMON LAW SITTINGS.***In and After Easter Term, 1845.***Queen's Bench.***In Term.***MIDDLESEX.**

1st Sitting, Wednesday . . . April 16

And until the Jury are desired to attend at the  
(Sit at Eleven.)

2nd Sitting, Monday . . . April 21

And until the Jury are desired to attend at the  
(Sit at Eleven.)

3rd Sitting, Tuesday . . . May 6

(At half-past Nine.)

**LONDON.**

Wednesday . . . May 7

(At Twelve.)

Sittings for Undefended and such Defended Causes as produce no satisfactory affidavit of Merits.

*In Term in Middlesex.*—The Undefended Remanets and New Causes with proper notice will be taken first; then will follow a limited number of Short Causes, and such Short Causes of Tort as shall have been appointed in the same way as special juries are for fixed days, by leave of the presiding judge.

*After Term.***MIDDLESEX.**

Friday . . . May 9

(Sit at half-past Nine.)

**LONDON.**

Saturday . . . May 10

(To adjourn only.)

Adjournment-day, Tuesday . . . May 13

(At half-past Nine.)

**Common Pleas.***In Term.***MIDDLESEX.****LONDON.**

Wednesday . April 23 | Friday . . April 25

Wednesday . April 30 | Friday . . May 2

*After Term.***MIDDLESEX.****LONDON.**

Friday . . May 9 | Saturday . . May 10

N. B.—The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Saturday the 10th May, in London, no causes will be tried, but the court will adjourn to a future day.

**Exchequer at Pleas.***In Term.***IN MIDDLESEX.**

1st Sitting, Wednesday . . . April 16

2nd Sitting, Thursday . . . . . 24

3rd Sitting, Friday . . . . . May 1

**IN LONDON.**

1st Sitting, Tuesday . . . . April 22

2nd Sitting, Wednesday . . . . 30

(And by adjournment,) Thursday . May 1

*After Term.***IN MIDDLESEX.****IN LONDON.**

Friday . . . May 9 | Saturday . May 10  
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

**PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.***Royal Assent. (5th April.)***Property Tax.****House of Lords.****BILLS FOR SECOND READING.**

Actions on Death by Accident.

Divorce, Privy Council.

City of London Trade.

Post Office Offences.

Land Clauses Consolidation.

Charitable Trusts.

Railway Clauses Consolidation.

**IN COMMITTEE.**

Bail in Error in Misdemeanors.

Bastardy.

**TO BE REPORTED.**

Deodand Abolition.

**BILLS PASSED.**

Companies' Clauses Consolidation.

Service of Common Law Process Abroad.

Service of Scotch Process Abroad.

Service of Irish Process Abroad.

**House of Commons.****BILLS FOR SECOND READING.**

Clerks of the Peace.

Medical Practice.

Roman Catholics' Relief.

Poor Law Settlement.

Jewish Disabilities.

**BILLS IN COMMITTEE.**

Crediton Small Debts Court.

Manchester Court of Record.

**PASSED.**

Property in Public Institutions.

**THE EDITOR'S LETTER BOX.**

The letters of P. and "A Subscriber" have been received.

We have been obliged again to defer some letters relating to the examination of article clerks.

U. T. is informed that enrolling (or registering) articles of clerkship must take place within six calendar months from the execution of the articles, otherwise the time will reckon from the day of registration, unless otherwise ordered by the court. 6 & 7 Vict. c. 73, ss. 8 & 9.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 19, 1845.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### THE LORD CHANCELLOR'S BILL FOR ADMINISTERING SMALL CHARITIES.

THE Lord Chancellor has at length brought in his bill for administering charities to a certain amount; and we consider it a very important measure. One thing is at any rate demonstrated by the bare fact of its introduction,—the avowed uselessness of the present machinery of the Court of Chancery in dealing with small matters: neither can we forget the course of legislation of late years, (of which the present bill forms a part,) which goes to displace the officers of that court, and to substitute others. First, the taxation of costs is taken away from the Masters' office, and the Sworn Clerks, who really did the work, are abolished, and an entire new staff of Taxing Masters is created. Next, lunacy matters, past, present, and future, are transferred from the Masters' office to the Lunacy Commissioners, whose office is recreated and remodelled for the purpose. And now, by the present bill, the jurisdiction in small charities is proposed to be taken away entirely from the Court of Chancery and to be transferred to new commissioners, the number of whom is not stated, to be appointed by the Home Secretary. Now why is the Court of Chancery thus despoiled of its possessions? and why, more especially, is the Masters' office thus relieved of its business? Have the Masters, then, too much

to do? Or do they discharge their duties inefficiently? This is not alleged. The Masters are certainly not overworked; and they are qualified, from practice, experience, learning, and station, to perform their duty most efficiently. No man is appointed to this important office without possessing a well known rank in the profession. What, then, is the reason of the unpopularity of the office? and why is bill after bill directed against it taken as a boon and hailed with the utmost satisfaction? The reason we conceive is simply this, that the machinery of the Masters' office is so fraught with expense and delay, that it has become the disposition of every one to avoid it; that it is a whirlpool which sucks in and destroys all small craft, and even endangers suits of weight and importance. It is not adapted to the wants or the purposes of the poorer suitor: and thus it is that bills which hold out the prospect of any relief, (for things have almost come to this pass, that any change must be for the better,) are welcomed, which, under other circumstances, no one would venture to propose. It remains, indeed, open to doubt, whether it would not be better to go a little deeper for a remedy; whether attention should not, in the first instance, be turned to the root of the evil: whether the Masters' office should not be reformed, and a remedy be attempted which would apply not only to lunacy and charities, but to all other matters within the jurisdiction of the Court of Chancery. But it is no wonder

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that Chancellor after Chancellor shrinks from the extent and difficulty of this Herculean task, and contents himself with endeavouring to devise a remedy for that part of the evil which appears most pressing. We have repeatedly endeavoured to show that there is a remedy; that the experience, learning, and ability now in the possession of the Court of Chancery should be rendered more available to the suitors of that court. We think that this frittering away of its jurisdiction might be avoided. Still, knowing the difficulties of the task, and the evils of the present system in the Masters' office, we are constrained to say that in the mean while, and for want of something better, we are willing to take the present bill. We hope, indeed, that it may be improved in some parts; and it is obvious that in its present shape it cannot be completely discussed; but, with some alteration, it appears to us that an acceptable reform of the law may be made.

We shall now give a full abstract of the bill. It will be observed that the proposed jurisdiction of the commissioners extends to all charities of 50*l.* per annum or 1,200*l.*, to be estimated by the analytical digest made by the former Charity Commissioners in 1842; and it will be obvious that to charities of this amount the machinery of the Court of Chancery cannot be beneficially applied.

#### CHARITABLE TRUSTS BILL.

THIS is a bill for securing the due administration of charitable trusts in England and Wales. It recites that in numerous cases property of small amount is held subject to charitable trusts in England and Wales, and it is expedient to provide for the due administration of such property, without incurring the expense of proceedings in courts of equity for that purpose; and in order the more effectually to check abuses in the administration of property subject to charitable trusts, it is proper that regular accounts should be kept of the receipt and expenditure of such property, and that such accounts should from time to time be inspected and examined as hereinafter provided. The following are the proposed enactments, the important parts of which, as they concern the profession, are stated fully:—

*Appointment of commissioners and inspectors.*—1. That it shall be lawful for one of her

Majesty's principal secretaries of state from time to time to appoint

to be commissioners for the purposes of this act, who shall be styled "The Commissioners of Charities," and shall hold their offices during good behaviour, and upon every vacancy in such commission to appoint to supply such vacancy; and such commissioners shall have the superintendence and control of charitable trusts, under and according to the provisions of this act; and in the construction of this act the words "the Commissioners" shall mean "the Commissioners of Charities."

2. That it shall be lawful for one of her Majesty's principal secretaries of state from time to time to appoint two fit persons to be inspectors of charities for England and Wales, for the purposes of this act, and from time to remove any such inspectors.

3. Oath of commissioners and inspectors.

*Officers, &c.*—4. That the commissioners may and they are hereby empowered from time to time to appoint a secretary, and, subject to the approbation of the Lords Commissioners of her Majesty's Treasury, or any three of them, so many clerks, messengers, and officers as they shall deem necessary, and from time to time, at the discretion of the commissioners, to remove such secretary, clerks, messengers, and officers, or any of them, and to appoint others in their place.

5. Salaries to be fixed by the Treasury.

6. Commissioners to have common seal.

*Jurisdiction of commissioners.*—7. That in every case in which the clear yearly revenue of any charity shall not exceed fifty pounds, or in which the estate and property thereof shall not exceed the sum or value of twelve hundred pounds, if the commissioners shall, by the petition in writing of any informant, or by the report of any inspector or otherwise, be informed of any neglect, abuse, or breach of trust in the management of such charity, or in the administration of its estate or funds, or of the want of a scheme for the application of its revenues, it shall and may be lawful for the commissioners and they are hereby empowered, after giving such notices as to them shall seem fit, to cite before them the parties charged with such neglect, abuse, or breach of trust, of entrusted with the application of such estate, funds, or revenues, and to summon, by precepts under their seal, and examine, any person or persons whomsoever in relation thereto, and to hear and determine summarily the matter so brought before them, and to make such order thereon for the payment, with or without interest, of any money belonging to such charity, in the hands of any receiver, trustee, or officer of such charity, or for the payment of interest on balances improperly retained in hand by any such receiver, trustee, or officer, or for the future administration of the estate and funds, or to establish such scheme for the application of the revenues of such charity, or to make any other order in such matter, respecting the property or the objects of such charity, upon the

trustees or officers of the charity, as to the commissioners shall seem fit; and every such order shall be final and conclusive, and not subject to any review, unless the commissioners shall think fit, in exercise of the power herein-after given to them, to rehear the same; and the commissioners shall for the purpose aforesaid hold their sitting at or as near to the place where such charity shall be situate as circumstances shall, in their judgment, require: Provided always, that no person so summoned shall be obliged to travel in obedience to such precept more than ten miles from his or her place of abode.

8. Analytical digest of the reports of the Charity Commissioners in 1842 to be evidence of income of charity, for the purpose of regulating and settling the jurisdiction of the commissioners under this act.

9. That in all cases within the summary jurisdiction of the commissioners, limited as aforesaid, it shall be lawful for the commissioners, when they shall so think fit, upon the application of the trustees of any charity, to authorize or direct the sale or exchange of any lands, rents, or other hereditaments belonging to such charity, or the grant of building or other leases thereof, which shall appear beneficial to such charity; and for assisting their judgment in the matter of such applications it shall be lawful for the commissioners, if they shall so think fit, to appoint any surveyors or other persons to examine the matter of such applications, and the commissioners may give such notice of all such applications as they shall deem proper for the information of persons interested in such charity; and every sale, exchange, and lease which shall be so authorized or directed by the commissioners shall be subject to such conditions and restrictions, and to such directions respecting the investment or disposal of the consideration money, and other directions, as to the commissioners shall appear proper, and shall be sealed or stamped with the seal of the commissioners; and all such sales, exchanges, and leases as shall be so made by the trustees of any charity, under such authority and direction of the commissioners, shall be good and valid at law and in equity to all intents and purposes whatever.

*Trustees.*—10. That in every case within the summary jurisdiction of the commissioners, limited as aforesaid, it shall be lawful for the commissioners, upon proof to their satisfaction of any abuse, breach of trust, or neglect of duty by any trustee or trustees of any charity, or of the estate or funds thereof, or in the event of any trustee or trustees becoming incapacitated, or desirous of being discharged, to remove any such trustee or trustees, by order under their seal, and in like form to substitute or appoint any new or other trustees or trustee thereof: Provided always, that where there shall be any special visitor or visitors of the charity, the consent of such visitor or visitors, in writing under his, her, or their hand or hands, shall be necessary in order to such removal.

11. That when and so often as any new trustee or trustees of any real or personal estate shall have been duly appointed as aforesaid under this act, then and in every such case, and by virtue of such nomination and appointment alone, and without any deed or instrument of conveyance, surrender, or assignment for that purpose whatsoever, all the lands, tenements, and hereditaments, and all the personal estate, of or belonging to the charity, shall forthwith be and be deemed to be vested in such new trustee or trustees as aforesaid, either alone, or jointly with the surviving, continuing, or other trustee or trustees (if any) of the same lands, tenements, and hereditaments, and personal estate, upon and for the same trusts, intents, and objects of the said charity.

12. That, in case of lands, tenements, or hereditaments of copyhold or customary or ancient demesne tenure, nothing hereinbefore contained shall be construed to dispense with the admittance thereto of the trustee or trustees, tenant or tenants for the time being of the same, or in anywise to affect the payment or satisfaction of all or any of the heriots, fines, fees, dues, or sums of money from time to time of right payable or accustomed upon the admittance or otherwise of any tenant or tenants of the honours or manors whereof such premises shall respectively be holden.

13. That whensoever any new trustee or trustees shall have been appointed as aforesaid, an office copy of the order or orders making, confirming, or evidencing such appointment, under the seal of the commissioners, shall be received as sufficient evidence of such appointment, in all courts, places, and proceedings whatsoever.

*Trust scheme.*—14. That in every case within the summary jurisdiction of the commissioners, limited as aforesaid, in which it shall appear to the commissioners that property given on or subject to any charitable trust cannot be applied to the purposes and according to the intention directed by the donor thereof, it shall be lawful for the commissioners, with the consent of the visitor or visitors, in cases where there is a special visitor or visitors of the charity, to be signified in writing under his, her, or their hand or hands, by order under their seal to settle or approve a scheme for the application of such property to any charitable purposes, as the commissioners shall think fit.

15. That in every case within the summary jurisdiction of the commissioners, so often as it shall appear to the commissioners that any claim or demand, or cause of suit, against any person or corporation, in respect of any neglect, abuse, or breach of trust in the administration or management of any charity or charitable estate or funds, or in relation to any property subject or alleged to be subject to any charitable trust, may be compromised or adjusted without any proceedings or the continuation of any proceedings at law or in equity, with advantage to the charity interested therein, or ought, under the special circumstances of the case, to be compromised or adjusted without

any such proceeding or the continuation of any such proceeding, it shall and may be lawful to or for the commissioners to compromise and adjust, or to authorize any trustees or others acting on behalf of the charity concerned therein to compromise and adjust, such claim, demand, or cause of suit, upon such terms and conditions as the commissioners shall think fit, so as the terms and conditions of every such compromise be set forth in an agreement in writing under the seal of the commissioners, and under the hand of the person or persons or under the seal of the corporation against whom such claim, demand, or cause of suit may have existed; and upon the due performance of the terms and conditions of such compromise by such person or persons or corporation as aforesaid such agreement shall be a final bar to all actions, suits, claims, and demands, by or on behalf of the charity concerned therein, in respect of the cause of action, suit, or matter in respect of which such compromise shall have been made.

**Regulations.**—16. That the commissioners shall from time to time make such regulations as they may think fit concerning the form and manner of the accounts to be kept and rendered, and the returns to be made under this act by persons entrusted with the receipt or application of the revenues of any charitable trust, and for the transmission and production of such accounts, and the vouchers thereof, to the commissioners or inspectors, and for the due investment and security of any monies subject to any charitable trust, and may from time to time rescind or alter such regulations: Provided always, that, before any such regulation shall be obligatory on the persons concerned in the administration of any charitable trust, a written or printed copy of such regulations shall be sent by the commissioners, by the post or otherwise, to such persons, or to the clerk (if any) of such charitable trust.

**Application of revenues.**—17. That the said commissioners, or any one or more of them, may, and each of the said inspectors shall, from time to time, when authorized so to do by any order of the said commissioners under their seal, make inquiry into the receipt and application of the revenues of any charitable trust in England and Wales, and, in cases within the summary jurisdiction of the said commissioners, make inquiry, inspection, and examination into the administration of such charitable trusts; and the said inspectors shall respectively make such inquiry, inspection, and examination in such districts as may from time to time be assigned to them by the commissioners, and shall obey the directions of the commissioners as to the times and manner of such inquiry, inspection, and examination, and all other directions of the commissioners not inconsistent with the provisions of this act, and shall make reports in writing of their respective proceedings under this act to the commissioners so often as they shall think fit or as the commissioners shall require.

18. That it shall be lawful for the commis-

sioners, or any one or more of them, or for any inspector under this act, when authorized as aforesaid, to call and inspect all books of account and vouchers concerning such revenues, and the receipt and application thereof, and to require the attendance of any person acting as master, officer, or servant of any such charity, or as manager or receiver of any estates or revenues subject to any charitable trust, or receiving any salary, emolument, or benefit from any charitable trust, and to require from any such person answers, orally or in writing, to any questions in relation to the estates and revenues to such charitable foundations and trusts, and the application thereof, and generally all such information, so far as may consist with the knowledge of such person, in relation thereto, as such commissioner or inspector may think fit to require.

19. That the commissioners, or any one or more of them, or any inspector, shall cause the examinations which shall be taken before them or him respectively, and all papers and documents, being parts of such examinations, to be from time to time transmitted to the office of the said commissioners; and every such inspector shall report his opinion, and the grounds thereof, upon an inquiry made by him, to the commissioners.

20. Commissioners empowered to examine upon oath. The like power may be delegated to an inspector.

21. Penalties of perjury for false swearing.

22. Trustees, with the approbation of the commissioners, may transfer stock into name of the Accountant-General of the High Court of Chancery, or pay charity money into the bank, in his name in the matter of the charity.

23. Indemnity to trustees making such transfer or payment.

24. Power to commissioners to call in monies on defective securities.

25. Where charity funds are insecure, Commissioners may order transfer or payment to the account of the Accountant-general.

26. Commissioners to make orders as to the payment of dividends.

27. No payment to be made by the bank, except upon authority of two commissioners, countersigned by the Accountant-General.

28. Stock transferred to the Accountant-General under any order of the commissioners may be sold under an order signed by two commissioners, &c.

29. After death of the Accountant-General the securities to vest in his successor.

30. Accountant-General not to interfere with charity monies, but only to keep the account at the bank.

**Fines for refusal to be examined.**—31. That if any person summoned to appear before the commissioners or one of them, or before any inspector authorized as herein-before is mentioned, shall wilfully omit or refuse to appear before such commissioners, commissioner, or inspector, or shall refuse to be sworn, or, being a person exempted by law from liability to examination upon oath, to affirm, or, being

sworn or having affirmed, as the case may be, shall refuse to answer to and before such commissioners, commissioner, or inspector, or to answer fully any lawful question, on oath or affirmation respectively, concerning any matter or thing relating to such estates or funds as aforesaid, or to the administration of such charitable trusts as aforesaid, every such person so refusing to comply with any such lawful requisitions of the commissioners, commissioner, or inspector, shall be liable to the payment of such fine to her Majesty as the Court of Queen's Bench or the Court of Exchequer, on application made by or on behalf of the commissioners, commissioner, or by her Majesty's Attorney-General for the time being, shall think fit to set and impose, which fine the said Court of Queen's Bench or Court of Exchequer is hereby authorized and empowered to set and impose according to their discretion respectively, and to enforce payment of the same by attachment or otherwise, in such manner as the said courts respectively may do in cases of contempt of the same courts.

32. Officers of charities who obstruct commissioners or inspectors subject to removal.

33. Trustees disobeying the act to be subject to removal.

34. Commissioners' order for payment of money may be enforced by Court of Chancery.

35. Legal estate of hereditaments now vested in municipal corporations and charitable trusts to be vested in the commissioners.

36. Commissioners may, on special application, add to the existing number of municipal trustees, where necessary to secure the fair administration of the funds.

37. Commissioners to have power of rehearing.

*Charity administration fund.*—38. That of the revenues of every charity within the summary jurisdiction of the commissioners, limited as aforesaid, except such as shall be specially exempted by any order of the commissioners, there shall be paid, on or before the 29th day of September in every year, into the Bank of England, in the name of the said Accountant-General, to an account to be intituled "The Charity Administration Fund," such sum, not exceeding sixpence in the pound on the net annual amount of revenue applicable to the purposes of such charity, as the commissioners shall from time to time by any order under their hands and seal direct; and the trustees of every such charity who shall be in the receipt of the revenues thereof shall pay the same accordingly; and in cases in which the charity funds shall have been transferred or paid into the name or to the account of the Accountant-General, in pursuance of the power hereinbefore contained, the commissioners shall make a similar order for payment into the Charity Administration Fund out of the dividends or annual proceeds; and the said Charity Administration Fund shall be applicable to the payment of all such salaries and expenses of the commissioners and other officers as the lords commissioners of her Majesty's treasury

shall authorize to be paid thereout, and all such expenses of suits and proceedings, in relation to charities of small amount in value, as the commissioners shall authorize to be paid thereout.

39. Power to her Majesty's Treasury to advance first expenses of commissioners or any deficit, the same to be reimbursed from Charity Administration Fund.

*Clerk of trust.*—40. That all trustees in whom property shall be vested upon any charitable trust, or who shall act in the administration of any charitable property or revenues, shall, if required by any order of the commissioners, from time to time appoint a fit person to be the clerk of such charitable trust, for the purposes of all returns by this act directed to be made, and of all communications with the board, and every such clerk shall on his appointment communicate his name and address to the secretary of charities to be appointed under this act.

41. Accounts of charity receipts and expenditure to be kept and audited annually. Statement of debts, receipts, and expenditure to be transmitted annually to the commissioners.

42. Commissioners to report to the crown.

43. Deeds affecting charities to be registered.

44. Deeds relating to charities to be kept in safe custody.

45. Indemnity to trustees for acts done under direction of commissioners.

46. Act not to extend to universities, public schools, &c.

*Exception of pending suits.*—47. That, save and except the powers herein-before given to compromise claims on behalf of charities, nothing herein contained shall extend to or affect any suit or proceedings actually depending concerning any charity, or property subject or alleged to be subject to any charitable trust.

48. Act not to extend to Ireland or Scotland.

49. Act may be altered this session.

## THE LAW OF COSTS.

### ACTIONS UNDER £20.

In a recent case the meaning of the direction to taxing officers, of Trin. Term, 7 Vict., as to costs where the sum recovered does not exceed 20*l.*, was much discussed. It was argued that it had the force of an act of parliament, but this was denied by *Parke, B.*, who said the rule was only a direction to the officers of the court as to their conduct on taxation: 2 Dowl. & L. 378. In the case to which we allude it appeared that Smith, an attorney, had been retained by Walton to defend an action brought against him by one Taylor, for the recovery of a sum under 20*l.* The cause came on for trial before the under-sheriff of Staffordshire, when the plaintiff was nonsuited; but sub-

sequently a rule was made absolute for a new trial. After notice had been given for the second trial, Walton told Smith that he had heard that the plaintiff meant to retain counsel, and therefore he (Walton) wished also to have counsel. Smith told him that if this were done the expense would be heavy, and that this, even in the event of success, would not be allowed on taxation against the opposite party. Walton, however, said he would have counsel; and Smith's affidavit stated that he believed that if he had not followed those instructions Walton would have proceeded against him for neglect of duty. Taylor obtained a verdict; and Smith delivered his bill of costs against the defendant, which was taxed under a judge's order. The Master, on taxation, disallowed a sum of 7*l.* 12*s.* 6*d.*, the expense of counsel, conceiving he was bound to do so under the Reg. Gen. Trin. T. 7 Vict.; the Master considered that under this rule he had no discretion whatever. But this view was held to be erroneous. "It will," said *Pollock*, C. B., "be the duty of the Master, when unusual directions are alleged to have been given, very strictly to inquire into the circumstances, and to have them proved by the most satisfactory evidence, so as to leave no doubt in his mind that the client was duly informed that he could recover none of the costs from the opposite party, and that with full knowledge of that fact he required the additional assistance for which the charge is made. As the Master appears to have acted on the principle that he had no discretion, the case must be referred back to him, that he may strictly inquire into the facts, and as far as possible protect the client against any improper charge of the attorney. If it should appear that these additional costs were incurred in consequence of express directions to that effect, given by the client with full knowledge of the consequences, the Master in his discretion may allow them." *In re Smith*, 2 Dowl. & L. 376.

## PRACTICAL POINTS OF GENERAL INTEREST.

### CRIM. CON.

In *Weedon v. Timbrell*, 5 T. R. 357, it was held that a separation between husband and wife is a bar to an action brought by the husband with respect to any sub-

sequent act of adultery. In *Chambers v. Caulfield*, 6 East, 248, Lord Ellenborough appears to have said that he did not consider the question as concluded by the case of *Weedon v. Timbrell*. In a late case of trespass for crim. con., the Court of Common Pleas allowed the defendant to add a plea, "that the plaintiff, at the time of the trespass, had renounced the comfort and fellowship of his wife, and had finally separated himself by deed from and was living apart from her." *Harvey v. Watson*, 2 Dowl. & L. 343. See also *Winkler v. Henn*, 4 C. & P. 498.

## NOTICES OF NEW BOOKS.

*An Abridgment of the Law of Nisi Prius.*  
By William Selwyn, Esq., Q. C. London; Stevens and Norton. 1845. Pp. 1543.

We are always glad to see the veteran authors of the profession engaged in editing new editions of their works, and more especially when such works have attained the rank of standard treatises in the general estimation of the profession. We welcome, therefore, the *eleventh* edition of Mr. Selwyn's Abridgment of the Law of Nisi Prius, in the labour of which it appears he has been ably assisted by his son, Mr. C. J. Selwyn, of the Chancery Bar, and by Mr. Romaine, of the Inner Temple.

It is now nearly forty years since the first part of Mr. Selwyn's original work appeared, and its passing, even in that long period, through ten editions is sufficiently indicative of its eminent reputation. This last edition has received the crowning grace of a permitted dedication to the author's illustrious pupil, Prince Albert.

Mr. Selwyn has incorporated in his new edition such parts of the recent statutes as in any way affect the subjects of his treatise; and it may be useful to enumerate some of them in the alphabetical order in which the work is arranged.

Thus, in the chapter on *Assault and Battery*, the effect is stated, in regard to costs, of the 3 & 4 Vict. c. 24.

Under the head of *Attorney*, the new act. 6 & 7 Vict. c. 73, for Consolidating and Amending the Law, is set forth with the decisions thereon, so far as they bear on the Law of Nisi Prius.

It does not appear that any questions have yet been raised under the new act as to the form and mode of delivering attor-

neys' bills, which may now be sent by the post in a letter signed by the attorney, and without proving, as heretofore, that the bill was written in words at length. The following is Mr. Selwyn's summary of the evidence in an action by an attorney :—

"The regular proof of a person being an attorney, is either by the production of the original roll, signed by the party on his admission, together with the proof of his signature, as evidence of identity; or by an examined copy of the roll, together with the admission;<sup>a</sup> but in an action by an attorney for slandering him in his profession, it is sufficient for him to prove that he has acted as an attorney in the court of which he is alleged to be an attorney, and if the defendant's words assume that the plaintiff is an attorney, it operates as an admission that he is so, and supersedes the necessity of other proof.<sup>b</sup>

"Assumpsit on an attorney's bill.<sup>c</sup> — To prove that a copy of the bill had been delivered pursuant to the statute, the plaintiff's clerk was called, who swore that he had delivered to the defendant a bill signed by the plaintiff, containing an account of the business done. He was then proceeding to state the items of this bill from the plaintiff's books, when the defendant's counsel objected that no notice had been given to produce it. It was insisted that this was unnecessary, and *Jory v. Orchard*, 2 Bos. & Pul. 39, and *Anderson v. May*, 2 Bos. & Pul. 237, were cited; but, per Lord Ellenborough, C. J., 'If there are two contemporary writings, the counterparts of each other, one of which is delivered to the opposite party and the other is preserved, as they may both be considered as originals, and they have equal claims to authority, the one which is preserved may be received in evidence without notice to produce the one which was delivered. So it must have been in the cases which have been cited, and if a duplicate of the bill delivered is offered I am ready to receive it. But I am quite clear, that this evidence from the plaintiff's books is inadmissible to prove that a bill was delivered according to the statute. I approve of the practice as to notices to quit; and I remember when the point was first ruled by Mr. Justice Wilson, who said that if a duplicate of the notice to quit was not of itself sufficient, no more ought a duplicate of the notice to produce, and thus notices might be required *ad infinitum*.' Plaintiff nonsuited.

"A copy of an attorney's bill,<sup>d</sup> (the original having been delivered to the defendant,) will be received in evidence, without proof of notice

to produce the original. Assumpsit on an attorney's bill: at the trial, it appeared that the plaintiff had not given the defendant notice to produce the bill delivered to the defendant; but a witness proved, that the bill so delivered was signed by the plaintiff, and then produced a paper, which he swore to be a copy of the bill delivered; this paper, however, was not signed by the plaintiff; but there was a copy of the plaintiff's signature made by the witness. This evidence was holden<sup>e</sup> to be sufficient, on the ground that notice to produce bill delivered was not necessary, because the bill delivered was in the nature of a notice."

In the statement of the *Bankrupt Law*, the several new statutes after the 6 Geo. 4, c. 16, and 1 & 2 Wm. 4, c. 56, are considered, namely, 2 & 3 Vict. c. 11 and 29; 5 & 6 Vict. c. 122; and 7 & 8 Vict. c. 96; and the decisions are also introduced into their appropriate places.

Under the heads of *Carriers*, *Common*, and *Debt*, the acts having relation to those subjects are also duly noticed. So also, in the chapters on *Ejectment*, *Factor*, *Frauds*, *Mandamus*, and *Quo Warranto*.

The law relating to *Partners* includes the several enactments made with regard to joint stock companies, so far as they come within the scope of the treatise.

In the chapter on *Shipping*, the new act consolidating and amending the law relating to merchant seamen and their registration, 7 & 8 Vict. c. 112, is stated in substance. And in that on *Slander*, the 6 & 7 Vict. c. 96, enabling an offer of an apology to be given in evidence in mitigation of damages.

The several *Tithe* acts are also considered; viz., 6 & 7 Will. 4, c. 71; 7 Will. 4, and 1 Vict. c. 69; 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 62; and 5 & 6 Vict. c. 54.

In the *Law of Wager*, the statute of 3 & 4 Vict. c. 5, is noticed; with the temporary acts 7 & 8 Vict. c. 3 and c. 58.

The 6 & 7 Vict. c. 85, establishing, under certain exceptions, the competency of *Witnesses*, notwithstanding their having been convicted of crimes, or being interested in the matter in question, is of course adverted to by the learned author, as applicable to actions commenced since the 22nd August, 1843.

It is curious, in looking at the long table of statutes cited in the course of these volumes, that from the Statute of

<sup>a</sup> 2 Phillpotts' Evid. p. 159, 5th ed.

<sup>b</sup> *Berryman v. Wise*, 4 T. R. 366, recognized in *Pearce v. Whale*, 5 B. & C. 38; relied on in *Sparkling v. Haddon*, 9 Bingh. 12.

<sup>c</sup> *Phillipson, Gent., one, &c. v. Chase*, 2 Campb. 110. But see *Colling v. Treweek*, post, 178.

<sup>d</sup> *Colling v. Treweek*, 6 B. & C. 394.

<sup>e</sup> *Anderson v. May*, 2 Bos. & Pul. 237. See the remarks of Bayley, J. on this case, in *Colling v. Treweek*, 6 B. & C. 400.



Merton, 20 Henry 3, to George 3, a period of 364 years, the list occupies only *three* pages; those of the sixty years of George 3, *one* page; of the ten years of George 4, *two* pages; of the seven years of William 4, not less than *five* pages; and already, during the seven years of the present reign, *three* pages.

Besides the several statutes which have effected alterations in the law as administered by the Courts of Nisi Prius, Mr. Selwyn has had a very extensive task to perform in considering the effect of all the points decided since his last edition in the year 1841. These researches have been carefully conducted, and the new decisions incorporated into the work, in the respective chapters to which they belong.

During the progress of a long work through the press, there must unavoidably occur, in these times of change, no inconsiderable portion of new matter, which frequently occupies a large appendix. Mr. Selwyn, however, has compressed his Addenda into two pages; and as these are the latest cases on the subjects to which they relate, we shall extract the principal part of them:—

“When to a declaration on a guarantee by defendant for goods to be supplied to S., with an averment that plaintiff supplied S. with goods amounting to the sum of 78*l.*, that S. did not pay, nor did defendant after notice; it was pleaded, that S. did pay the sum in the declaration mentioned, in full satisfaction and discharge, &c., and that plaintiff received the same. Plaintiff replied, that S. did not pay, nor did plaintiff receive the said sum in the declaration mentioned in full satisfaction and discharge: it was holden, that the pleadings did not confine the plaintiff in his proof to the 78*l.*; but that after proof by defendant, that S. had paid 78*l.*, plaintiff might, without having new assigned, give evidence of a balance unpaid beyond the 78*l.* *Moses v. Levy*, 4 Q. B. 213.

“Debt for rent on a demise for years, with an indebitatus count for fixtures sold; the plaintiff claimed by his particulars 5*l.* 5*s.* for rent, and 12*l.* for fixtures. The defendant paid 11*l.* 5*s.* into court, on the whole declaration, and pleaded *numquam indeb. ultra*. It was holden to be no admission of the defendant's liability in respect of fixtures, to a greater amount than had been paid into court. *Goff v. Harris*, 5 M. & Gr. 573.

“In this case of *Bevan v. Nunn*, 9 Bing. 112, *Tindal*, C. J., expressed an opinion, that the payment of a debt to a creditor, by way of preference, was not an act of bankruptcy. This question came before the Court of Review, in the case of *ex parte Simpson*, in *re Hunt*, Nov. 13. The Chief Judge, *Knight Bruce*, V. C., (after communicating with Chief Justice

*Tindal*, who retained his former opinion,) decided, that a *payment* of money by a trader to a creditor, by way of fraudulent preference might of itself be a ‘gift, delivery, or transfer of any of his goods or chattels,’ within the meaning of the 6 Geo. 4, c. 16.

“As to the meaning of the words ‘notice of any prior act of bankruptcy,’ in stat. 2 & 3 Vict. c. 29, see *Bird v. Bass*, 6 M. & Gr. 143.

“Where defendant assigned to plaintiff a policy of insurance on defendant's life, and covenanted to pay the annual premiums, and if he did not, and plaintiff paid them, to repay plaintiff: the defendant afterwards became bankrupt, and obtained his certificate; a premium accruing due after the bankruptcy, and being unpaid by defendant, and plaintiff having paid it, and not been repaid; it was holden, that defendant was not discharged from liability for these breaches of covenant, by sec. 56 & 121 of stat. 6 Geo. 4, c. 16. *Toppin v. Field*, 4 Q. B. 386; in which the case of *Atwood v. Partridge*, 4 Bing. 209, was recognized.

“The Court of Exchequer have recently decided (denying the authority of the case of *Lane v. Tewson*.) that the defendant cannot, under the pleas of non detinet and not possessed, show that he had a common interest with the plaintiff in the property sought to be recovered; but that such a defence ought to be specially pleaded: and *Alderson*, B., in delivering the judgment of the court, said, ‘The plea of not possessed, puts only the property of the plaintiff in issue; and if thereupon the plaintiff has such a property as will enable him to maintain detinue, it is enough. A plaintiff entitled to a share in a chattel, may maintain this action. That was decided in *Broadbent v. Ledward*, 11 A. & E. 209; 3 P. & D. 45. And if the defendant has any right to detain, arising out of a joint interest, or out of a lien or a pledge, he must plead such right specially on the record.’ *Mason v. Farnell*, 12 M. & W. 684.

“‘All that the court decided in *Cooch v. Goodman* was, that the action might lie, though the deed was not executed by the covenantees; it was not held, that an interest passed by the deed, or that it amounted to a lease.’ Per *Patteson*, J., in *Doe d. Marlow v. Wiggins*, 4 Q. B. 376.”

## REMOVAL OF THE COURTS FROM WESTMINSTER.

THE following is the form of a petition, which it is recommended should be signed by country solicitors, to promote the important object of removing the Courts to the neighbourhood of Lincoln's Inn.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble Petition of the undersigned Attorneys and Solicitors practising in

SHEWETH

That as the business of the suitors of the

superior courts of law and equity is necessarily in great measure conducted by the attorneys and solicitors resident in London, it is essential to the interests of the clients of your petitioners, and of the provincial solicitors generally, that the practitioners in London should be afforded every possible facility for transacting the suitors' business with economy and dispatch.

That the offices of the great majority of the London solicitors, the chambers of the bar, of the Masters in Chancery, and of the judges, as well as all the law and equity offices being situate in or near the inns of court, that neighbourhood has become the centre of law business, and as the courts of Westminster Hall are distant thence a mile and a half, a journey of three miles is rendered necessary on every occasion of attendance on the courts at Westminster, and thereby, and through other inconveniences resulting from the remoteness of Westminster Hall from the district of law business, a great waste of professional time is occasioned, and the efficiency of professional services is materially lessened.

That these evils would be remedied, and great public advantage be gained, by transferring the courts of all the law and equity judges to the neighbourhood of the inns of court, and uniting them in a suitable structure under one roof.

That the present insufficiency of the courts of Westminster Hall, the large outlay which will be requisite to alter their exterior in conformity with the design of the new houses of parliament, and the present want of subsidiary courts, both of law and equity, appear to your petitioners to make the present a very fit time for carrying the proposed object into effect.

Your petitioners therefore humbly pray your honourable house to take the subject into your consideration, and adopt such measures for the correction of the existing evils as to your honourable house may seem meet.

And your petitioners will ever pray, &c.

A petition from the *London Solicitors* lies for signature at the Hall of the Incorporated Law Society.

## THE JUSTICES' CLERKS BILL.

*To the Editor of the Legal Observer.*

SIR,—Observing the discussions upon the Justices' Clerks Bill, I beg to submit to you that the clerks to the magistrates should not, either directly or indirectly, conduct prosecutions against prisoners or defend them, for the following reasons:—

The natural desire of emolument tempts them to take prosecutions to the assizes and sessions, thereby increasing the amount of the county rates by the allowances given, and which prosecutions would be settled to the greater advantage of the county in a summary way by the magistrates.

The clerk being the person who generally takes the depositions of the witnesses and

prisoners, is in many instances tempted for his own benefit to give a colouring to the evidence adduced, which may produce a committal, when upon trial the prisoner is acquitted, (after saddling the county with considerable expense). This would not be the case if the clerk were not allowed to conduct the prosecution.

A magistrate's clerk ought not to be allowed on any consideration to defend prisoners, as the ends of justice might thereby be defeated. The clerk is the officer in attendance on the examination of the witnesses, and takes the depositions, and there may be danger lest he frame the depositions more to the advantage of his client than is consistent with the strict discharge of his duty; at all events, he will be in possession of all the evidence against the prisoner, and no other professional man is allowed to know anything, except what appears from the depositions.

I beg also to state, that where the clerk is a professional man and allowed to conduct prosecutions and defences, the practice is to take the whole of the prosecutions, both to the assizes and sessions. The business is kept from the rest of the profession by the police and parish constables, who communicate with the magistrate's clerk, and enable him to make use of the information, and prosecutors in nineteen cases in twenty are not aware that they are at liberty to name any professional man they may think proper.

I beg further to submit, that many of the above observations will apply to orders and appeals in parochial matters, and that the clerks should be prohibited from conducting such appeals. It is frequently the case that in small parishes no attorney is employed to conduct the parish business, and in such cases, if a pauper becomes chargeable, it is usual for the overseers of the removing parish to apply to the magistrate's clerk to take the examinations, and obtain orders of removal, which it sometimes happens are made to parishes for which the magistrate's clerk is concerned as attorney. Here then, should the clerk be desirous of serving his clients, the appellant parish, he has the power to do so in framing the examinations, which in practice are not taken in the presence of the magistrates, but are prepared beforehand and read over to the examinants on being sworn, and it cannot be expected that magistrates generally would be able to detect the omission or introduction of words which may be fatal to the order. So very nice are the points, and so very abstruse has the poor law now become in its various branches, that even yet we find case upon case every term, where parishes are put to enormous expenses merely in consequence of the omission or introduction of a few words. Surely such a power as that possessed by magistrates' clerks, in cases of the above description, is a very dangerous one to be placed in the hands of any individual. It may be exercised honestly, or it may not. In the latter case where is the remedy? None that I know of, as it would be next to an impossibility to obtain proof that the omission or introduction was wilful.

I do not mean to say that these mischiefs occur frequently, but I maintain that there ought not to be any ground of suspicion in the due administration of justice.

As you always appear to advocate the interest of the profession generally, I have troubled you with the foregoing observations. The profession should take the matter up immediately, otherwise they will find themselves outgeneraled by comparatively a few individuals.

A SUBSCRIBER.

SIR,—The objections raised by some of the magistrates' clerks to this bill, and published in your last number, induce me to make a few observations in reply.

The objections themselves evidently emanate from certain of those public functionaries who have for a series of years monopolized the whole business of petty sessions, and the prosecutions and appeals consequent therefrom. The prosecution or appeal is in almost every instance secured to the clerk, as the nearest and *perhaps* the most efficient legal practitioner. I submit that the younger members of the profession are hardly dealt with by this monopoly, and have great reason to complain. They have no means of breaking through it, and are consequently deprived of those advantages which they ought to enjoy. I think the profession generally must be in favour of the proposed new measure; and I would suggest that petitions to parliament be forthwith prepared, praying the bill may pass into law.

A SUBSCRIBER.

## SELECTIONS FROM CORRESPONDENCE.

### EXAMINATION HONOURS.

SIR,—I have been expecting for some weeks past that this subject would be taken up by some of your more able correspondents, and placed in its true light, in consequence of the notice contained in your number of the 1st Feb. 1845,—“that the subject would be taken into the consideration of the examiners.” No notice however having been taken of it, and fearing that the universal silence of our body might be taken as standing for consent, I have been induced to throw together some few ideas for the consideration of articulated clerks, and hope that a small portion of your valuable space may be allotted me for the purpose.

And first I would premise, that the last sentence of the paragraph before alluded to is one worthy of deep consideration, and that it contains, in a few words, the pith of the question, and gives it us in a tangible form: “The stimulus to exertion would no doubt be beneficial to many students, *but we have some doubts whether it would be generally advantageous.*” It reminds me strongly of the child wishing to have his pill gilded, or a sweetmeat to take

after it. Surely the knowledge, in most cases, that according to our knowledge of our profession will be our subsistence, ought to be sufficient without any such factitious aids.

There is a vast difference between *honours in our profession* and *at the universities*: and this difference has, I fear, been too much lost sight of by some of your correspondents; viz., that in the law men cannot stop short and be contented with a certain amount of knowledge: they *must, as long as they remain in it*, be constantly adding to their knowledge, (for what they know at their examination is but a tithe of what is requisite in order to their entering properly on the duties of their calling,) whilst at the university it is merely a species of certificate that, at the time of their examination, they were of a certain proficiency. In other words, the honours he may have gained in the law do not tell what a man is ten years afterwards,—he may have perhaps rushed inconsiderately into business for himself, and gained no additional knowledge; on the other hand, he may have taken the wiser step of going into a large office, where he has seen plenty of practice, and added considerably to his experience. So that the honours do not “grow with his growth” nor “strengthen with his strength;” because a man may, with many of his equals in standing, have taken a high rank ten years ago, but that is no reason why he should still be high among them now.

Thus it evidently follows, that the opinion of the public, testified by their giving a man much or little of their confidence, must after all be the only true guide to a knowledge of a man's abilities or capabilities.

Now the good opinion of the public is that on which our subsistence and rank in society depend; and I submit that, even supposing that a man's examination honours might be of advantage to him ten years hence, the public will, in ninety-nine cases out of a hundred, know nothing about it;—the Law List is not like the “Red Book” or the “Blue Book,” one published for the use of, or purchased by, any but those who are connected with the profession: how then are they to be informed of the facts of the case? It is thus evidently, as regards the public, perfectly useless,—nay, more, if anything; for the reasons I have given above, it will be absolutely mischievous, and I think I can easily prove that it is *pernicious as regards ourselves*. Again, shall we get any good from the members of our own profession by the possession of these distinctions? This is, I think, at all events *doubtful*. My own impression is, that very little would be the consequence. Lawyers have very little, comparatively speaking, left to them in the way of choosing attorneys in other towns, and then it is generally for some little matter rather requiring a knowledge of the practice of the law than its theory. All the benefit that hypothetically might be gained from honours, would be better got by means of a stiffer examination; then indeed both the public and ourselves would be benefited by the increased confidence

with which the younger members of the profession would be regarded.

And now, as regards ourselves individually; shall we be benefited by such an introduction? I submit not. Not to enter upon a disquisition on the subject of unequal advantages, which has already been very ably argued *pro* and *con*, but merely saying that I coincide in opinion with those who hold such a difference to be fatal, as a man may afterwards make up what he has lost under the present system, whilst the other would damn him at once, and give him no chance of recovery.—I will at once proceed to other considerations. Granted that these distinctions may in some *few* cases urge on an otherwise unwilling student; but in how many other cases will a man stop short *directly* he has attained them, and think that he has now got a passport that will help him on without his own assistance in the least? Again,—does not the possession of them argue one, at all events for some ten or twelve years to come, a *novus homo*? and need I ask whether it is better to be, at least in appearance, (“assume a virtue if you have it not,”) a man of good standing and (its necessary result) of good practical knowledge of his duties, or to be marked down as one lately entered into the profession, and only possessing a certificate of superficial knowledge on some particular points? Besides, is it fair to those of the profession who have or will be admitted previously to their establishment?

And last, though not least, in answer to the argument—that it is not fair to those who have worked hard and have passed a good examination, to be placed no higher than those who have been idle, and have only just escaped being remitted to their studies, I would just suggest that, though they may not reap their reward now, that it is sure to come hereafter, in the shape of greater confidence on the part of the public: and which is best needs no answer.

I would just remark, in conclusion, that this would be the very reverse of the rule in the other branch of our profession. They there let a man practise some years before he is allowed a silk gown or coif; here we should give the reward at once.

Trusting to the kind feelings you have always shown to the younger members of our profession for my apology for thus trespassing so long on your valuable space, I remain

SUB ARTICULIS.

#### EXAMINATION PRIZES OR DISTINCTIONS.

MR. EDITOR,—I have been unwilling to intrude an opinion into the pages of your valuable journal upon this subject, which has of late been so much canvassed, but without any desirable result. However, observing in your paper an article reviving this topic of discussion, and which again puts in issue the question, how far it is expedient that badges of distinction should be distributed among the deserving candidates at the examinations; and being myself likely, ere long, to be in a position either to merit or be denied the mark of pro-

ficiency contended for, I venture to request the favour of your providing a corner in your journal for the insertion of the following remarks.

It appears that the professed object of the prize is, to stimulate the pupil and incite his best exertions; and your correspondent ventures to observe “that the public would have some criterion to judge of the merits of each.” I doubt much the theory, and question equally the practical result of the latter proposition, and incline to think the adopted practice preferable, for many reasons.

In the first place, I conceive the proposed alteration would entail an unenviable duty upon the examiners, who, in their anxiety to do justice to the meritorious candidate, and equal desire to mark the undeserving, would find no inconsiderable difficulty in drawing the line between that class which should and that which should not bear off a prize.

Besides, it is by no means uncommon for a really deserving candidate, from nervousness or excitement at the momentous nature of the ordeal he is about to undergo, to lose his wonted confidence, and be unable to answer some questions to which at other times he could unhesitatingly have furnished accurate replies. This is no censurable feeling; and the hardship of such a case would be redoubled by the gloomy prospect of being among the few un-prized.

Again,—what are the criteria for public judgment? The award of the prize would be no guarantee for the general knowledge of the candidate, since one succeeds by his proficiency in some, and another by his attainments in other, branches of law. Is one to be distinguished as a common lawyer, another as a conveyancer, equity, bankruptcy, or criminal lawyer? And although the examination is undoubtedly sufficiently severe and affords a reasonable test, still I believe it will not be denied that it is possible for a pupil to attain a sufficiency of general knowledge to pass the examination, though his capability to conduct the practical business of his profession may not be such as to justify the awarding him a prize, if that mark of distinction is to form the basis or criterion of the public judgment.

I think, then, for the reasons I have suggested, the bestowal of distinctive prizes would not be attended with the benefit anticipated by some, and that the system, in the end, would prove to be as fallacious as I incline to deem it unnecessary; for in my own view I consider that the attainment of *admission* into the honourable profession of the law is a sufficient stimulus and incitement, and success in that profession, which can only be expected to attend the persevering, is an ample reward for the studious application and energetic exertion of the meritorious candidate. He may rest assured that the idle and undeserving will be sufficiently marked by the difficulty of advancement which their sloth and ignorance will inevitably entail upon them.

ONE WHO SEEKS THE ‘PRIZE’ OF  
ADMISSION.

SIR,—I am much pleased to see this very important subject again mooted; and without troubling you further with the arguments in favour of this proposal,—for they have often been recapitulated in your paper, though seldom, if at all, *really* answered,—I would propose, as the first step in carrying out the suggestion of your correspondent P. W. D., that a meeting of article clerks should be convened, when the subject can be maturely and deliberately considered, and such steps taken as may be considered desirable to bring the subject virtually and substantially before the examiners; and I am sure we shall meet with that courtesy and attention from them which the importance of the case requires, and for which they are at all times so justly celebrated.

If P. W. D., or any other of your correspondents in favour of the subject, would put themselves in communication with me, I have no doubt the necessary preliminaries might be taken, without needlessly troubling you in the matter.

With many thanks for your continued and varied endeavours to promote our interests, permit me to remain

Your very obedient servant,

T. C. H.

24, Golden Square.

## HOUSE OF LORDS' REPORTS.

### EVIDENCE.—DECLARATIONS *post litem motam*, &c.

WE resume our examination of the last number of Messrs. Clark and Finnelly's reports. We were in the midst of the Sussex Peerage case before the Committee for Privileges. After the discussion relative to the question as to Bishop Wiseman, this point arose, namely, whether, in support of the claim, a will dated Berlin, 15th September, 1799, and proved to have been in the hand-writing of the Prince, and sealed with the royal arms, was receivable in evidence as a declaration on the part of the Prince, made by him at the time.<sup>a</sup> The reception of this paper was strenuously resisted by the counsel for the crown, on the ground that it was a will which appeared to have been made after a suit had been instituted to annul the Prince's marriage.<sup>b</sup> Now in order to make this objection intelligible, we must observe that in matters of pedigree the declarations of members of the family forming the subject of inquiry are, from the necessity of the thing, received in evidence, although such declarations are viewed with considerable jealousy,

on account of their not being upon oath or admitting of cross-examination. The ground of their reception is, that there is in general a presumption of their being true, where the party has at the time of making them no conceivable object to gain by declaring what is false. The ordinary rule doubtless is, that nothing that is said by any person can be used in evidence unless it is delivered upon oath. But where the declaration is spontaneous, where the party uttering it had no end to serve by means of it, and where, moreover, he is dead, so that he cannot be called as a witness to be examined afresh, it does seem reasonable and just that a declaration made under such circumstances should be admitted as evidence. In the famous Berkeley Peerage case this question was much debated. There it appeared that William Fitzharding Berkeley, (the present Lord Seagrave,) was born on the 26th December, 1786, and he alleged that his father and mother were married on the 30th March, 1785. In 1799 he filed a bill in the Court of Chancery to perpetuate testimony; and one of the witnesses examined was the then Earl of Berkeley, who swore positively to the reality of the marriage and to the plaintiff's legitimacy. Now upon the death of the Earl, his son, whom we have named, claimed the peerage, and in support of his pretensions proposed to read before the Committee of Privileges this deposition, as a declaration by the late Earl in matter of pedigree respecting the legitimacy of his son. The committee required the opinion of the judges how far this deposition was admissible: all of them but one held it inadmissible, and the committee so ruled;—the ground of which was, that inasmuch as there was a suit depending (*a lis mota*, as it is called,) before the declaration was made, a suit involving the very question of legitimacy, and in which the late Earl must be supposed to have been most warmly interested, as affecting the legitimacy of his issue and the honour of his family, it was quite out of the question to imagine that a declaration on such a topic, made in such circumstances, could be otherwise than tainted with a bias which must disentitle it to confidence in a court of justice. Now apply these principles to the proposal of the claimant of the Sussex Peerage to read the declaration of his father appearing in the will produced, and made subsequent to the institution of the suit in Doctors' Commons to have his marriage set aside. The cogency of the precedent seems irresistible. Accordingly, the lords held unanimously that the document tendered could not be admitted as evidence.

Another question of a distinct, though somewhat cognate character, the lords disposed of, which was this; whether the declarations of the deceased clergyman (Mr. Gunn) who had officiated at the ceremony between the Prince and Lady Augusta at Rome, were receivable to prove the marriage. These declarations had been made to his son; and in support of the proposal to receive this as evidence, it was urged that it was the declaration of an indi-

<sup>a</sup> This was not the will under which the executors acted.

<sup>b</sup> The suit here referred to was resorted to by George III. in Doctors' Commons to have the marriage of the Duke of Sussex and Lady Augusta Murray set aside, as being in contravention of the Royal Marriage Act.

vidual who knew the facts, who was not interested in misrepresenting them, and whose statements, he being dead, came within the rule above mentioned. It was also said, (as an additional inducement to admit his declaration), that he had an interest in being silent respecting the points in question, for that he was liable to penalties under the Royal Marriage Act, and had in fact refused on that ground to answer interrogatories put to him, in a proceeding which had been resorted to in chancery, so that his declaration made in the face of such consequences had a peculiar claim to credence, and ought to be received. The observations of the Lord Chancellor, delivered in expressing the sentiments of the committee, are so remarkable for clearness of diction, aptness, and promptitude of illustration, as well as for satisfactory judicial reasoning, that we must give them at length. He said, "Where the party has known the facts, and is dead, and has made declarations; and these are against his interest, and would, were he living, subject him to a prosecution; such declarations, it is said, are receivable in evidence. That is the broad and general proposition. The question is, can it be sustained? Let us try it by instances constantly occurring. A. is indicted for murder. B., who is dead, made, while living, a declaration that he was present at the murder; that declaration is against his own interest, and would, had he lived, have subjected him to a prosecution. It is in principle the very case supposed in the claimant's argument. It is not possible to say that such declaration would have been receivable in evidence. Again, suppose the Duke of Sussex had been put upon his trial under the Royal Marriage Act, for contracting this marriage; is it possible to maintain that Mr. Gunn's declarations would have been receivable in evidence against him? It is sufficient to state these instances to show that the proposition of the learned counsel cannot be maintained. It is not true that the declarations of deceased persons are in all circumstances receivable in evidence when in some way or other they might injuriously affect the interest of the party making them. Nor is it true that because while living a party would be excused from answering as to certain facts, his declarations as to those facts become evidence after his death. Besides, these declarations were made by Mr. Gunn to his own son; and it cannot be supposed that he would thereby have exposed himself to prosecution, or that he uttered them under any belief that he should do so. These declarations therefore cannot be received in evidence."

So that in this way the declaration of the claimant's father, the Duke of Sussex, was rejected as having been made *post litem motam*; while the declaration of Mr. Gunn was rejected on the ground that there was nothing in his relation to the case or connexion with the parties which should induce a departure from the ordinary rules of evidence.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister-at-Law.]

SOLICITOR AND CLIENT.—TAXATION OF COSTS.—CONSTRUCTION OF 6 & 7 VICT. c. 73.

*The settlement of a bill of costs on the transfer of a mortgage, without its having been previously submitted for examination, is such a special circumstance, within the meaning of the act 6 & 7 Vict. c. 73, as calls upon the court to order it to be taxed after payment.*

*If there should appear to the court, from a statement of the charges in a bill sought to be taxed, that some of them are below what would be allowed on taxation, the court will give the party whose bill it is the liberty of making any additions, before the Master, that he can fairly claim.*

THIS was a petition on the part of a mortgagor for the taxation of the bill of costs of the mortgagee's solicitor, after payment. The bill was made out on the occasion of the mortgage being transferred; and the items objected to were—1st, a charge of 7 guineas, being at the rate of 1 guinea a year for 7 years, for receiving the interest on the mortgage and handing it over, and for correspondence respecting repairs and insurance; 2nd, a charge of 2l. 4s. 4d. for a copy of the draft transfer of the mortgage to keep; 3rd, a charge of 2l. 6s. 6d. for an attested copy of the same deed; and 4th, a charge for two journeys and expenses to complete the transfer. It appeared that there had been two meetings to settle the business, at the first of which the mortgagor's solicitor was present, and the bill was produced to him, but it was not then complete, as the mortgagee's solicitor stated he could not exactly state what the amount of the journeys and expenses might be, but he thought it would be about 10l. At the settlement of the business the clerk to the mortgagor's solicitor was present, and he objected to the amount of the bill, but it was at length settled under protest, leaving a balance of about 10l.; the amount of the bill was 67l.

Mr. Basalgette, for the petition, said, it appeared from the affidavit of the petitioner's solicitor, that when the bill was produced to him at the first meeting he did not examine it, nor was it left with him for perusal, and that he was not present at the second meeting; that he considered several of the charges in the bill excessive, and advised the taxation. It appeared also from an affidavit of the London agent, that Messrs. Tugwell, whose bill it was, had offered to give up the balance of 10l. provided the taxation were not insisted on, which was a proof that they thought the charges could not be sustained. [The Master of the Rolls said, that circumstance should not at all influence

his judgment, for it might be a very wise proceeding to get rid of an expensive contest.]

Mr. Kindersley said, the petitioner was one of six persons who were entitled to the mortgaged property, and that a petition was first presented by Mr. Packwell, the solicitor to the petitioner, whose wife was entitled to one of the shares, but that had been abandoned. He then entered into various explanations, as detailed in the respondent's affidavits, for the purpose of showing that the charges complained of were fair and regular charges, and that there were not any special circumstances upon which the order asked by the petition could be founded. The charges for the copies were rendered necessary, because the deed of transfer contained an indemnity, and in strictness a duplicate of it should have been executed. The journeys were rendered necessary, in consequence of the custom of the manor in which the mortgaged property was situate, requiring the personal attendance of married women to surrender, although one of them might have been dispensed with had not Mr. Packwell made a mistake in a power of attorney which he had obtained; and with regard to the charge of seven guineas, it appeared that the interest of the mortgage was always in arrear, by reason of which extra trouble was created, and from the circumstance of the property being house property, there were numerous attendances respecting repairs and insurance, so that in fact the charge was considerably less than it ought to be. In the cases decided before the late act, it was held that the special circumstances must be such as would amount to a question of fraud.

The *Master of the Rolls* said, he thought the conduct of Messrs. Tugwell was in the highest degree to be commended, and he should take care they did not suffer in respect of the costs of any of the previous proceedings; but the question was, whether the act of parliament did not require a certain rule to be laid down which could not be departed from. In all these cases there was always this very special circumstance, that the costs were demanded at a time when the mortgage money was to be paid, and when the settlement of the business could not be put off without great inconvenience: that must always be considered a special circumstance. In this case the bill was said to have been delivered to Mr. Packwell, but it did not appear that he examined it, and it was afterwards paid without the opportunity of any objection being urged against it. The items objected to constituted a large portion of the bill, and although it could not be said there was any fraudulent pressure, there was the pressure of circumstances.

With regard to the charges they did not appear high enough according to the usual scale, and therefore, in directing the taxation, he must also direct that Messrs. Tugwell should have the liberty of amending their bill by making such charges as they could fairly claim. His lordship added, that although he deemed it right to make the order for taxation, there

was no imputation on Messrs. Tugwell, and he should direct the taxing Master to report special circumstances, so as to procure for them all costs incurred by the prior irregular proceedings, and should reserve the costs of this petition.

*In re Tugwell.* March 27, 1845.

#### Vice-Chancellor of England.

[Reported by E. VANSITTART NEALE, Esq., Barrister at Law.]

#### SOLICITOR'S LIEN.—PRODUCTION OF DOCUMENTS.

*A firm of solicitors who had discharged themselves from acting for a certain party, required to produce and leave in the Master's office, various title-deeds and other documents mentioned in the schedule to an answer of that party put in by them; though these documents had come into the possession of a former partner of the firm, long before the commencement of the suit in which the answer was put in, and were subject to a lien for taxed costs due to that partner.*

THIS was a motion for an order upon a firm of solicitors, to produce and leave certain documents in the Master's office, according to the direction of the Master, without prejudice to any lien which they might have upon them. The suit in which the motion was made, was an administration suit, commenced in 1834; and the documents to which it related were comprised in a schedule to an answer put in by the solicitors who then composed the firm, for a Mr. Harrison, the trustee and executor of the party whose estate was to be administered. At that time the firm consisted of B. C. and D. Previously to 1828, it had consisted of A. and B.; and it now consisted of B. and C. The documents comprised a variety of title-deeds, and other papers which had nothing to do with the proceedings in the cause, and had been in the possession of the firm of A. and B. long before the institution of the suit, from whom they had passed into the hands of B. C. and D. In 1826 the bill of A. and B. had been taxed at the instance of Harrison at 1059*l.*, which, it appeared, still remained unpaid; and in the answer above mentioned, the documents scheduled were said to be subject to the lien of A. and B., and of B. C. and D. upon them.

In 1840, after the retirement of D., B. and C. had discharged themselves from acting as solicitors to Mr. Harrison any longer. The present action was founded upon the right of the client in such a case,—according to the doctrines laid down by Lord Eldon in *Colegrave v. Manley*, 1 T. & R. 400, and Lord Cottenham in *Heslop v. Metcalfe*, 3 M. & C. 183, to—"have his business conducted with as much ease and celerity, and as little expense, as if the connexion of solicitor and client had not been dissolved." Could it be doubted, it was urged, that if that connexion had continued, the solicitor must have brought into the Master's

office all those papers in his possession, which the Master considered necessary to the proper prosecution of the decree? *Brassington v. Brassington*, 1 Sim. & Stu. 455. But if so, then upon the principle of the above cited cases, the present plaintiff had, as against the firm of B. and C., the right to call for the production of these papers. On the other side, it was argued, that the rule laid down in the cases quoted, related only to papers in the cause, such as briefs, &c., not to documents such as were asked for in the present instance—that it did not apply to any papers which came into the possession of a solicitor, subject to an ascertained claim by a former solicitor, which the client had only to discharge in order to set his papers free;—and that in the present case neither the representatives of A, who was deceased, nor D., were before the court; in whose absence the order asked for could not be made.

Mr. Stuart and Mr. Stinton, for the motion.

Mr. Bethell and Mr. Gifford, contra.

His Honour said, that in this case the only thing asked for was a change in the place where the documents should be kept; and that it appeared to him a strange thing if a solicitor could allow his client to put in an answer, stating that documents were in his possession or power, and then he, or those who continued the firm, should be able to say that they would not allow that client to comply with an order for their production.

Order made, but without costs.

*Gregory v. Creswell*. April 7, 1845.

### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

#### FORFEITURE.—EJECTMENT.

*A. covenanted to insure, in a particular manner, premises held by him to B.; he did not literally perform this covenant, but B. was satisfied with what was done, and accepted rent up to Christmas 1842. C. afterwards came in upon B.'s title, and brought ejectment on the non-performance of the covenant to insure, laying the day of the demise after the time when he became landlord. Held, that the forfeiture was not waived so far as he was concerned, and that he was entitled to recover in ejectment.*

**EJECTMENT.** In the year 1836, the premises in question were demised to the defendant. The lease contained a covenant that the defendant would at all times well and sufficiently insure, and keep insured, the said premises and buildings to their full value, in some respectable insurance office, in the joint names of the landlord and tenant. There was a proviso for re-entry, in case of a breach of any of the covenants contained in the lease. A policy of insurance was effected to the full value of the premises, and the premiums regularly paid by defendant; but the policy was effected in the

name of the defendant alone, and not in the joint names of landlord and tenant, according to the terms of the lease. The date of the demise in the declaration was May 1843, and rent had been regularly paid by the defendant up to Christmas 1842. The premises did belong to one Oliver, but they had subsequently come into the hands of the lessor of the plaintiff as reversioner. Oliver had assented to the policy in the way in which it had been effected, and had told the defendant that if he continued such policy he would not enforce the covenant against him.

A verdict was found for the lessor of the plaintiff, with liberty reserved for the defendant to move to enter a nonsuit. A rule nisi having been obtained,

Mr. Watson, and Mr. Peacock, showed cause.

The defendant has committed a breach of covenant, by not insuring in the names of the landlord and tenant according to the provisions of the lease. The parties agree to a tenancy on certain terms, and there is no hardship in binding them to those terms. There has been no waiver of the plaintiff's right to the forfeiture by the receipt of the rent, because the reversioner is not bound by any arrangement made between the lessor and the defendant. The evidence of the assent of a former landlord to the policy will not affect the right of the plaintiff. This is a continuing covenant, and a breach is committed for any portion of time that they remain uninsured, according to the terms of the lease. *Doe d. Flower v. Peak*,<sup>a</sup> *Doe d. Ambler v. Woodbridge*,<sup>b</sup> *West v. Blake-way*.<sup>c</sup>

Mr. Bovill, contra. There has not been a strict compliance with the terms of this lease; but the question is, whether the plaintiff has not by his conduct led the defendant to suppose that he had done all that was required of him. The case of *Dow v. Rowe*,<sup>d</sup> was ejectment on a forfeiture for breach of covenant to insure in the joint names of lessor and lessee, and in two-thirds of the value, and there it was held that the conduct of the lessor, being such as to induce a reasonable and cautious man to conclude he was doing all that was necessary or required of him, by insuring in his own name, and to the requisite amount; the other party could not recover for a forfeiture, though there was no dispensation or release from the covenants. In *Doe d. Pittman v. Sutton*,<sup>e</sup> the same doctrine was laid down; in *Pickard v. Scars*,<sup>f</sup> Lord Denman says, "The rule of law is clear, that, where one by his word or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

<sup>a</sup> 1 B. & Adol. 428.

<sup>b</sup> 9 B. & C. 376. <sup>c</sup> 2 Mar. & Gr. 729.

<sup>d</sup> *Ryan v. Moody*, 343. <sup>e</sup> 9 C. & P. 706.

<sup>f</sup> 6 Adol. & Ellis. 469.



There has been a waiver of the forfeiture by the receipt of rent, and although there is a continuing breach, yet the plaintiff cannot insist upon the forfeiture for want of a strict compliance with the covenant, because, until notice is given the waiver continues. *Doe d. Morecraft v. Meux.*<sup>s</sup>

As to the construction of provisos for re-entry in a lease, see *Doe v. Blam.*<sup>h</sup>

*Cur. ad. vult.*

Lord Denman, C. J., delivered judgment. This was an action of ejectment, on a forfeiture for breach of a covenant to insure in the joint names of landlord and tenant. There can be no doubt of the fact of the breach of covenant, and the lessor of the plaintiff must recover, unless he has barred himself from proceeding. It was proved at the trial, that there was a waiver till Christmas 1842. The demise as laid in the declaration, is in May 1843, so that the ejectment is at all events a harsh proceeding. The court will not willingly lend itself to a proceeding of this kind, where there is nothing wilfully or perversely wrong in the conduct of the tenant, and where he believes he is acting in compliance with his covenant, and to the satisfaction of his landlord. Still, however, the legal rights of the parties must be preserved, and equity has refused to relieve a tenant against the effects of a covenant to insure. *Green v. Bridges.*<sup>1</sup> This may operate severely in particular cases, but it must be for the general advantage, by teaching all parties that they must perform covenants into which they have entered. Since then this lease contains a covenant of this sort, the only question to be considered is, whether that covenant has been broken, so as to give the landlord a right to enter for the breach. It is said here that he has no right, for that the present landlord is bound by the act of the former landlord, who expressly waived the forfeiture. This case has been likened in that respect to the case of *Pickard v. Seares*, and *Doe d. Pitman v. Sutton* has also been referred to. But no case has gone the length of saying, that a breach of a covenant can be justified by a parol license, for that would be to confound the very principles of the law, and the case last mentioned is, besides, distinguishable from the present. In that case there was an option for the landlord to insure if the tenant did not, and the tenant showed that the landlord had availed himself of the option, which of course prevented the forfeiture. In *Doe v. Rowe*, the landlord had misled the tenant by delivering to him a deficient abstract of lease. Here there was nothing of the kind. Besides this, the waiver could not operate beyond Christmas 1842, and a subsequent breach was not justified by that waiver. The rule must therefore be discharged.

Rule discharged.

*Doe d. Uston v. Gladwin.* Sittings in Banco after Hilary Term.

<sup>s</sup> 4 B. & C. 606.

<sup>h</sup> *Moody v. Malkin*, 189.

<sup>1</sup> 4 Sim. 96.

## Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

### INDICTMENT.—CONSPIRACY.—VENUE.

*Where an indictment for conspiracy laid the offence within a county, but at a place from which no venire facias could properly be awarded; Held, that the defect was immaterial, since the 6 Geo. 4, c. 50, s. 13.*

*Peacock* moved to quash an indictment for conspiracy. The indictment laid the conspiracy at Gray's Inn, in the county of Middlesex; and the ground of objection was, that the offence was alleged to have been committed at a place from which a *venire facias* could not be awarded. The affidavit in support of the application stated that there was no such place in the county of Middlesex as Gray's Inn, which was merely the appellation of an inn of court, though used in common parlance to denote a collection of courts and squares, such as Holborn Court, South Square, &c., but that it was not a locality from which a jury could be summoned.

*Williams, J.*—Is it certain that if the words "Gray's Inn" were altogether omitted it would be of any importance?

*Peacock.*—Every material fact must be alleged, with certainty of time and place, and the place at which the offence is laid must be one from which a *venue* may properly come. In *R. v. Harris* an indictment for perjury, laying the offence to have been committed at the Guildhall of the city of London, was held to be bad, on the ground that the offence ought to have been laid in a parish or ward.

*Williams, J.*—I do not think there is any force in the objection; nor am I sure that if the words "Gray's Inn" had been wholly expunged from the indictment it would have been a defect. The averment is of an offence at Gray's Inn, in the county of Middlesex, from which it appears that the transaction in question took place within the county, therefore within the jurisdiction of those by whom the inquiry is to be made. The case referred to was decided in the former state of the law; and the strictness of the rule which then prevailed upon the subject has been broken in upon, as to offences of a transitory nature, by the 6 Geo. 4, c. 50, s. 13, which provides that the jury shall be returned *de corpore comitatús*, and not from a particular *visne*.

Rule refused.

*Regina v. Gompertz and others.* Q. B. P. C. Hilary Term, 1845.

<sup>s</sup> 2 Leach, C. C. 800.

**Exchequer.**

[Reported by A. P. HURLSTONE, Esq., Barrister at Law.]

**JUDGES' ORDER.—TRIAL.**

*While a cause was in the list for trial, the defendant consented to a judge's order for payment of debt and costs on a certain day. Before that time he obtained fresh evidence in support of his defence. Held, that the court had jurisdiction to set aside the order and let the defendant in to try the cause.*

In the month of May last the plaintiff commenced an action to recover the amount of two checks payable to bearer. The defendant pleaded (amongst others) that the checks were given for money lost at play. The case being in the list for trial, on the 6th December, 1844, the following order was made by Alderson, B.:

"Upon hearing the attorneys, &c., and by consent, I do order that on payment of 2,000*l.* and interest on the two checks from the date until the day of payment thereof, the debt due from the defendant to the plaintiff, for which this action is brought, together with costs, to be taxed and paid on or before the 14th December, instant, all further proceedings in this cause be stayed; and I further order, that in case default be made in payment as aforesaid, the plaintiff shall be at liberty to sign final judgment and issue execution for the whole amount remaining unpaid at the time of such default, with costs of judgment and execution, together with sheriff's poundage, officer's fees, and all other incidental expenses, whether by *f. fa.* or *ca. sa.*"

After the order was made, the defendant discovered some fresh evidence in support of his plea, and thereupon applied to a judge at chambers to rescind the order, which being refused, a similar application was made to the court, and a rule *nisi* granted, against which

*Watson and F. V. Lee* showed cause. First, the court has no jurisdiction to set aside the order. This is not like a case where additional evidence is discovered after a trial, for there the proceedings are adverse; but here the court is asked to rescind an agreement made by consent of the parties. Suppose the defendant had given a cognovit, would the court set it aside because he afterwards discovered some evidence which might have defeated the claim? *Bligh v. Brewer*, 3 Dow. P. C. 267, expressly decided that a party giving a cognovit cannot afterwards object that at the time of his arrest part of the debt due on a promissory note had been paid, and that the note was given for an illegal consideration. That is a stronger case than the present; for there the proceedings were in *invitum*. To set aside an agreement made by consent would open a door to fraud.

*Martin and Barstow*, in support of the rule.—The court may interfere at any time while the proceedings are in *fi. ri.* [*Pollock, C. B.*—There is no doubt the court has jurisdiction. *Alderson, B.*—It is open to the court at any

time before judgment is signed (which is the act of the court) to see that the act of the court is not unjust.] The circumstances are strong to induce the court to interfere. The case resembles that of an application for a new trial, on the ground that a party has been taken by surprise, and has since obtained fresh evidence. *Bligh v. Brewer* is distinguishable, for there the cognovit was given by the party with full knowledge of the facts, and with full means of proving them.

*Cur. adv. vult.*

*Pollock, C. B.*, delivered judgment. The court have no doubt of its jurisdiction to entertain the question. Whenever any act remains to be done by the court in order to carry out the intentions of parties, such, for instance, as allowing judgment to be signed, the court has an equitable jurisdiction to consider whether the act is proper and allowable under the circumstances. Then, as to the merits of the case; it is clear that there was a proper question to be submitted to the jury, and which ought to be submitted to them. This case is not like *Bligh v. Brewer*, where judgment had been signed on a cognovit, and the court refused to interfere to set it aside, on the suggestion that it had been given for too much; but it rather resembles that of a party who has discovered fresh evidence after a trial. Under the circumstances, therefore, the rule should be absolute on payment of costs by the defendant; and in the event of the ultimate judgment being in favour of the plaintiff, he should have the same benefit of it, so far as all the issues raising the question of gaming are concerned, as if it had been signed on the day on which he was entitled to enter it according to the terms of the order; the defendant to pay interest at five per cent. after the time the money became due. It should also be made a condition of the rule that the trial should proceed, notwithstanding the death of either of the parties.

Rule absolute accordingly.

*Ward v. Simeon*. Exchequer. Hilary Term, January 27, 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

*Bourne v. Gatliffe*, 11 Cl. & Fin. 46.

A CARRIER OF GOODS BY SEA BOUND TO GIVE THE CONSIGNEE NOTICE OF HIS ARRIVAL IN PORT:

The plaintiff, a manufacturer at Londonderry, committed to the defendants certain linen goods, to be carried by them in their steam vessel to London, and there delivered in good order, (accidents of the sea, &c. excepted,) unto the plaintiff or assigns. The ship arrived at London at two in the afternoon of Sunday the 28th August, and was reported at the Custom House at 10 o'clock the next morning. The goods were landed at a wharf called Fennings Wharf, without notice to the plaintiff, between the hours

of eleven and four on the 29th of August, and on that night were destroyed by an accidental fire. The question was, whether the defendants were liable. At the trial, the Lord Chief Justice *Tindal* directed the jury, that they were to consider whether a delivery at *Flemings Wharf* was a delivery according to the usage of the Port of London. And if they should think it was *not*, they would return a verdict for the plaintiff. To this direction exceptions were taken. The jury returned a verdict for the plaintiff; who accordingly had judgment for damages with costs. Upon a writ of error carried into the Exchequer Chamber, the judgment complained of was affirmed. But the question was again agitated upon a further writ of error, which came on for hearing in the House of Lords in the last session of parliament. The question was stated by the counsel for the plaintiff in error to be, whether the master of a foreign ship can, on arriving in the Port of London, land the goods in a convenient and customary place, and then be relieved from responsibility on their account? Upon this point of the argument for the plaintiff in error, Lord *Campbell* said,—“Do you mean to contend that the master may land the goods instantly and sail away with the next tide? You must go the length of alleging, that the instant the master arrives he may, without notice of consignment, land the goods. Where is the authority for that proposition?”

The Lord Chancellor.—“Suppose the ship arrives in the middle of the night. You must maintain that the master may unload instantly, and put the goods on a wharf without any notice to the owner.”

Lord *Brougham*.—“And that you may thus throw on him the charge of wharfage, which on receiving reasonable notice he would be prepared to avoid.”

In answer to these searching and formidable interrogatories, the counsel of the plaintiff in error referred to the following observations of Lord *Kenyon*, (5 Term R. 395.) “The owners of ships bringing goods from foreign countries to merchants in London. Are they bound to carry the goods to the warehouses of the merchants here, or will they not have discharged their duty on landing them at the wharf to which they generally come? It would be strange, indeed, if the owners of a West Indian man were held liable for any accident that might occur to goods brought by them to England, after having landed them at their usual wharf.” So to the same effect, Mr. Justice *Buller*, (5 Term R. 397), “When goods are brought here from foreign countries, they are brought under a bill of lading, which is merely an undertaking to carry from port to port. A ship trading from one port to another, has not the means of carrying the goods on land; and according to the established course of trade, a delivery on the usual wharf is such a delivery as will discharge the carrier.” This was not all. Mr. Justice *Grose* was relied upon. That judge said, (5 Term R. 500), “The liability of carriers is at an end when the goods

are landed at the usual wharf.” Nevertheless, the Law Lords seemed little disposed to favour such doctrine.

The Lord Chancellor said: “This is a contract to deliver. The owner of the goods is at London, and could conveniently receive notice; or if at Liverpool or any other distant place, would have an agent here to whom notice could be given. Can the master be discharged by immediately landing the cargo without notice?” To this the counsel for the plaintiff answered, “That the consignee must be ready; for if he is not ready, the master may proceed at once to land the goods, and so discharge himself from responsibility.” In the end, the Lord Chancellor, on behalf of himself and the other peers, said—“The contract in this case was to deliver to the consignee in the Port of London. Instead of this delivery taking place, the goods are placed on the wharf. It was necessary to aver something to show that that was a delivery to the party entitled; but nothing of that sort is averred. I agree, therefore, with the judges in the court below.” Judgment affirmed.

The general proposition derivable from this determination, therefore, is not unimportant. It is this—that a carrier by sea is bound to give notice to the consignee of his arrival in port—so that the consignee may be enabled to take the proper steps for the reception of the goods. Indeed, to hold the contrary—to say that he might land them in the middle of the night—and sail away by the next tide, without troubling himself to apprise the consignee, would be something too extravagant to be tolerated in the practical dealings of mankind, but more especially in a mercantile community. We have only to suppose the goods to be of a perishable nature, as fruit for example, and then see what would be the consequence if effect had been given to the argument of the plaintiff in error. The dicta quoted from Lord *Kenyon*, and *Buller*, and *Grose*, J. J., do not go the length of holding that notice may be dispensed with. And they therefore afford no countenance to the contest maintained in support of the appeal.

## CHANCERY CAUSE LISTS.

### Master of the Rolls.

Easter Term, 1845.

- Tristram v. Roberts*, *West v. Roberts*, dem.  
*Attorney-Gen. v. Richards*, plea.  
*Stand over*, *James v. James*.  
 19th April, *Johnson v. Todd*, *Same v. Same*, *Same v. Same*, fur. dirs. and costs and petition.  
*Walton v. Potter*.  
*Langley v. Fisher*.  
 Trinity Term, *Hope v. Hope*, *Same v. Same*, *Same v. Same*.  
*Till mentioned*, *Richardson v. Horton*, *Same v. Taylor*, *Same v. Derby*, fur. dirs. and costs.  
 Trinity Term, *Attorney-General v. Bedingfield*.  
*Till suppl. bill*, *Hele v. Bexley*, *Same v. Same*.  
*Till suppl. bill*, *Gibson v. Nicol*, *Same v. Alsager*.

Mayor of Ludlow v. Charlton.  
 Attorney-General v. Ironmongers' Co., exons.  
 fur. dirs. and costs.  
*Michas. Term*, Earl of Dundonald v. Norris.  
*Hilary Term 1846, part heard*, Mqs. of Hertford  
 v. Lord Lowther, exons.  
*First cause day*, Wiggins v. Wiggins, Same v.  
 Linthorne.  
*Short line*, Attorney-General v. Long, Same v.  
 Cobbe, Same v. Troughton, and petition.  
*First cause day, part heard*, Davenport v. Charles-  
 worth, Charlworth v. Manners, rehearing.  
 Farquhar v. East India Company, exons.  
*Trinity Term*, Attorney-General v. Heytesbury  
 Hospital.  
*Trinity Term*, Attorney-General v. Mayor of Ply-  
 mouth.  
*S. O. Short*, Parker v. Parker.  
 Meryon v. Collett.  
*Trinity Term*, Hornby v. Bispham, Same v. Key,  
 Same v. Brandon, Same v. Ward, Same v. Houghton,  
 Same v. Yates, fur. dirs. & costs.  
*First cause day*, Attorney-Gen. v. Govs. of Hartle-  
 bury School, Attorney-Gen. v. Bp. of Worcester,  
 fur. dirs. and costs.  
*Michs. Term*, Campbell v. Crook, exceptions.  
*April 22, part heard*, Lethbridge v. Chetwoode.  
*First cause day*, Vexey v. Fyson.  
*First cause day*, Gordon v. Lowe, Same v. Same.  
*28th April*, Lord Nelson v. Lord Bridport, exons.  
 fur. dirs. and costs.  
 Gee v. Gurney.  
*15th April*, Augeraud v. Parry.  
 Lindgren v. Lindgren.  
 Bennet v. Cooper.  
 Hodgkinson v. Cooper.  
 Davis v. Prout, Same v. Davis, fur. dirs. costs  
 and petition.  
 Love v. Gaze.  
 Hodgkinson v. Wyatt.  
 Thornton v. Knight.  
 Fowler v. Durham, Same v. Same, fur. dirs. and  
 costs.  
 Lockhart v. Alder, Same v. Crouch.  
 Goaling v. Townsend.  
 Atkinson v. Bartrum.  
 Bateman v. Hotchkisson.  
 Sprott v. Yorke, Same v. Same.  
 Carpenter v. Bignell, Same v. Same.  
 Harrison v. Harrison, Same v. Same, Same v.  
 Skidmore, Same v. Harrison.  
 Grubb v. Perry.  
 Whittaker v. Whittaker.  
 Lane v. Hardwick, Same v. Goodyear.  
 Price v. Price, fur. dirs. and costs.  
 Norris v. Faint.  
 Hammer v. Hammer.  
 Cross v. Cross.  
 Thomas v. Davies.  
 Budd v. Flowerdew, fur. dirs., costs, and pe-  
 tition.  
 Bradstock v. Whitley.  
 Pelly v. Wathen, Same v. Lewis, Same v. Same.  
*Short*, Rolfe v. Wright, and petition.  
 Stoecken v. Dawson, Same v. Same, Same v.  
 Belcher, Same v. Wallace, exceptions, fur. dirs.  
 and costs.  
 Macgregor v. Macgregor, Same v. Same, fur. dirs.  
 and costs.  
 Hasfield v. Wells.  
 Barker v. Bailey, fur. dirs. and costs.  
 Butterworth v. Harvey, fur. dirs. & costs.  
 Stedman v. Burrell, exons.  
 Attorney-General v. Drapers Co., fur. dirs. and  
 costs.

Weekes v. Dodson, Same v. Smith, Grover v.  
 Weekes, fur. dirs. and costs.  
 Lord Nelson v. Nelson, fur. dirs. and costs.  
 Dornay v. Bovradaile, exceptions, fur. dirs. and  
 costs.  
*Short*, Guidici v. Kinton, fur. dirs. and costs.  
 Routh v. Hutchinson.  
 Harris v. Farwell.  
*Short*, Attorney-General v. Wright.  
 Compton v. Bloxham, Same v. Same.  
 Cathcart v. East India Company.  
 Stanes v. Parker.  
 Haldenby v. Spofforth, Same v. Same, Same v.  
 Dunn, Clark v. Same, fur. dirs. and costs.  
*Short*, Hall v. Williams.  
 Kightly v. Trimbeay, Same v. Same.  
 Horrocks v. Leadman.  
 Bishop v. Cappel.  
*Short*, Fowke v. Rigge.  
 Hill v. Maurice, fur. dirs. and costs.  
 Willis v. Douglas.  
*Short*, Tench v. Stephens.  
 Smith v. Webster, fur. dirs. and costs.  
 Johnston v. Todd, Same v. Marshall.  
*Short*, Joyce v. Joyce.  
*Short*, Smith v. Carter, fur. dirs. and costs.  
 Hatfield v. Pryme, Same v. Sheddon, fur. dirs. &  
 costs.  
 George v. George.

**Queen's Bench.—Crown Paper.**

*Easter Term, 1845.*

For Saturday, April 19.

*Wills*.—The Queen v. The Inhabitants of New  
 Sarum.  
*Lancashire*.—The Queen v. The Inhabitants of  
 Orton in Westmoreland.  
*Derbyshire*.—The Queen v. The Inhabitants of  
 Bakewell.  
*Kent*.—The Queen v. The Inhabitants of Seven-  
 oaks.  
*Leicestershire*.—The Queen v. The Inhabitants of  
 Appleby.  
*Shropshire*.—The Queen v. The Inhabitants of  
 Lilleshall.  
*Warwickshire*.—The Queen v. John Gardiner.  
*Staffordshire*.—The Queen v. The Inhabitants of  
 Wolverhampton.  
*Worcestershire*.—The Queen v. John Perkins.  
*England*.—C. K. K. Tynte v. The Queen in error.  
*Middlesex*.—The Queen v. The Inhabitants of St.  
 Anne, Westminster.  
*Cornwall*.—The Queen v. John Randall and  
 John Taylor.  
*Somerset*.—The Queen v. Edward Coles.  
*Bolton*.—The Queen v. The Inhabitants of Great  
 Bolton.  
*Durham*.—The Queen v. The Newcastle and Dar-  
 lington Junction Railway Company.  
*Leeds*.—The Queen v. The Inhabitants of Ripon.  
*Yorkshire*.—The Queen v. The York and North  
 Midland Railway Company.  
*Kent*.—The Queen v. The Mayor of Sandwich.  
*Middlesex*.—The Queen v. The Inhabitants of St.  
 Paul, Covent Garden.  
*Sussex*.—The Queen v. The Inhabitants of Brighton.  
*Lancashire*.—The Queen v. The Inhabitants of  
 Manchester.  
*Cheshire*.—The Queen v. The Overseers of Cud-  
 dington.  
*Staffordshire*.—The Queen v. The Inhabitants of  
 Worthenbury.

*Cheshire.*—The Queen v. The Inhabitants of Altrincham.

*Hull.*—The Queen v. The Inhabitants of Stockton in Durham.

*England.*—John Williams v. The Queen, in error.

*Oxon.*—The Queen v. John Haines and another.

*Notts.*—The Queen v. The Midland Railway Co.

*Middlesex.*—The Queen v. The Inhabitants of St. Margaret's, Westminster.

*Berks.*—The Queen v. The Mayor, &c., of New Windsor.

*Durham.*—The Queen v. The Inhabitants of Killyerby, Yorkshire.

*Warwickshire.*—The Queen v. The Churchwardens, &c., of Toleshill.

*Cheshire.*—The Queen v. The Pate.

*Surrey.*—The Queen v. The Guardians of the Poor of St. Mary, Lambeth.

## ATTORNEYS TO BE ADMITTED.

*On the last day of Easter Term, pursuant to Judges' Orders.*

### Queen's Bench.

*Clerks' Names and Residence.*

*To whom Articled, Assigned, &c.*

Hayward, Charles Frances, 2, Adelaide Place, City; and Dartford

Hawkins, Christopher Stuart, 80, Lombard Street; and Modbury

Myers, Richard, Leeds

John Hayward, Dartford.

Servington Savery, and John Thomas Savery, Modbury.

Ayrton Gatcliff, Leeds.

## RENEWAL OF ATTORNEYS' CERTIFICATES.

*On the last day of Easter Term, 1845.*

### Queen's Bench.

Barnes, Henry Eugene, Mercers' Hall, Tokenhouse Yard.

Bassett, Thomas Prichard, formerly Thomas Prichard Popkin, 50, Nelson Square; Brussels.

Capreol, Harry Peter, Aberayron, Canada; Bedford Street.

Coates, Richard, Manchester.

Dudman, William, 6, Upper Grafton Street, Shoreditch.

Eliot, James, 12, South Street, New North Road; Dulwich; Red Lion Passage; Hoxton Old Town.

Florence, James, No. 8, Charing Cross; Paris.

Harris, Joseph, 70, Westmoreland Place, City Road.

Harris, Horatio, Birmingham; Stourbridge.

Jackson, Richard Lancaster.

Jones, Daniel Price, Newcastle; Emllyn.

Jones, David Edward, 6, Montanna Place, Lark Hall Place; Stockwell.

Kay, Daniel, Chorley.

Mather, John, Manchester; and Newton Heath, near Manchester.

Mayer, John Parker, Newcastle-under-Line; and Stoke-upon-Trent.

Parker, Richard, Oxford Terrace, Hyde Park; Dover; Montreuil, France.

Parsons, Frederick John, Newbury; Burton Crescent.

Upton, George, Keighley.

Woods, Edward, Claremont House, Upper Rosomon Street, Clerkenwell; John Street, Pentonville; Gerrard Street, Lower Islington.

Warren, Daniel, St. Helier, Island of Jersey.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### House of Lords.

The bills affecting the profession waiting for second reading, are,—

Actions on Death by Accident.

Divorce, Privy Council.

Charitable Trusts.

### House of Commons.

Clerks of the Peace.

Common Law Process Abroad.

[For the other bills, see our last list, p. 476.]

## THE EDITOR'S LETTER BOX.

THE next number, which will close our 29th volume, will contain a Digested Index to the Cases reported in that volume. The Title-page, Table of Contents, &c., will be given early next month.

We are gratified to find that our continued exertions in the cause of the profession are appreciated, as well by our old as by new subscribers.

We have somewhat enlarged our original plan of noticing and commenting on all new points of law and practice; and in giving the new statutes, we shall accompany or follow them by explanatory notes.

The Letter of "Vindex" has been received.

# The Legal Observer,

OR,

## JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 26, 1845.

— "Quod magis ad nos  
Pertinet, et necesse malum est, agitamus."

HORAT.

### THE TRANSFER OF PROPERTY ACT.

THE bill amending the Transfer of Property Act is now expected with some impatience, and we doubt not will soon be laid on the table of the House of Lords. We have already expressed our opinion,<sup>a</sup> that no delay should take place in this respect which it is possible to avoid. Since we last adverted to the subject, we have had no reason to think that any alteration has taken place in the existing practice of conveyancing by reason of the late act. On the contrary, experience has confirmed the justice and propriety of the course which we then recommended. The well-advised part of the profession has not acted on this statute; but, as we have already said, it is impossible to know what may have been done or attempted to be done under it in the length and breadth of England, Wales, and Ireland, for to all these parts of the United Kingdom does the act extend. Time only can show this; but the legislature may prevent this act from perplexing any future abstract of title, by not only repealing it from the date of the repealing act, but by depriving it, as far as possible, of all effect and operation from the 1st of January last. In no other way can this act be effectually repealed.

While this important matter was pend-

ing, which we thought was well known to the whole profession, we have been surprised to find that Mr. Sweet has published what purports to be a second edition of a work, giving "concise precedents in conveyancing," grounded on this very act, 7 & 8 Vict. c. 76.<sup>b</sup> We certainly should not have thought it necessary to advert again to this work, if it did not now assume a much more imposing appearance. It has swelled from a pamphlet into a good-sized royal 8vo. volume. It is not a mere hasty edition of the act, thrown off at the moment, but has the appearance of being a deliberate production; and we are sorry to see that no line has been altered, no error corrected, or even attempted to be explained. We still read in the first page of the introduction the following sentence: "The references, in conveyances of freehold estates, to the statute dispensing with a lease for a year, the ordinary limitations to trustees to preserve contingent remainders in settlements by deed or will, and powers to trustees and mortgagees to give discharges for money, *will no longer be required*; but the insertion of such clauses, *though useless*, yet will not be productive of any ill effect."

Now if this be so, either Mr. Sweet or

<sup>b</sup> Concise Precedents in Conveyancing, adapted to ordinary use in small transactions; with Practical Notes, and a Commentary on the stat. 7 & 8 Vict. c. 76, entitled "An act to Simplify the Transfer of Property." By George Sweet, Esq., of the Inner Temple, Barrister-at-law. The second edition. Sweet: 1845.

<sup>a</sup> See *ante*, pp. 237, 277.

ourselves are deplorably mistaken. We have repeatedly stated, for instance, that the reference to the act dispensing the lease for a year cannot be prudently abandoned, and we believe that we still have correctly stated the usage of the profession; and yet we have here a distinct assertion that it is useless. If it be so, it must be by virtue of the second section; and this section, as we conceive, is the one of all others in the act which has been pronounced to be inexplicable, and therefore not to be acted on. In the same page Mr. Sweet, indeed, says himself, "The continuance of the old forms of assurance is evidently contemplated by the 7th section."

In this apparent confusion of recommendation, let us see the form of deed that Mr. Sweet recommends; and we will take the precedent of the most simple purchase deed we can find,—“A conveyance of freeholds in fee by a vendor and his wife to uses to prevent dower,” p. 140. This commences thus: “*A deed made on the day of between, &c. Now these presents witness that in consideration of £ already paid by the said (purchaser) to the said (vendor), the said (vendor) and (wife) his wife hereby grant and convey unto the said (purchaser) and his heirs all that, &c.*” Now in what way is it intended that this instrument shall operate? Is it a grant? That is not a proper form of conveyance for an estate in possession. Is it a bargain and sale? There is no direction for enrolment. Is it a lease and release? There is no reference to the lease or to the act dispensing with it. If it be none of these, it must be a new kind of deed: and this, we conceive, the profession is not yet prepared to adopt. And why is it not prepared to do this? Simply because a varying and unsettled practice must be avoided as one of the worst of evils. If with every deed the doubt was to arise as to the way in which it operated, it would indeed be a serious increase of labour and responsibility.

But not only would there be a doubt, if Mr. Sweet's forms were used, in what way the deed operated, but the forms themselves would vary from each other. Let us take the most familiar parts of deeds, the operative words, and the covenants for title; are they uniform in Mr. Sweet's forms? By no means. In the form to which we have just referred we have seen the operative words are ‘grant and convey,’ (p. 141.) In the purchase deed immediately preceding

they are ‘grant, release, convey, and confirm,’ (p. 138.) In the next conveyance (of freehold “lands by tenant for life to a railway company,”) the word ‘convey’ (p. 150) alone is used. In the next, ‘grant and convey,’ (p. 152.) And there is nearly the same variety in the covenants for title. And this variety and contrariety might be easily shown to exist in the other forms. Now here we have at once an unsettled practice, and a flood of new forms. No two deeds would be alike; no two sets of clauses would be the same; all uniformity of practice would be at an end; and thus evils would be let in far greater, as it appears to us, than any that would be cured. The more, indeed, we have examined these forms, the more doubtful do they appear. We might pursue the inquiry, but probably we have said enough to make our readers pause before adopting any one of them. We have reluctantly returned to this subject, and nothing but its importance, and the conviction that danger would arise from our silence, has induced us to do so.

One other word, and we have done. Mr. Sweet says that the forms have been “unsparingly cut down to the smallest practicable dimensions, it being assumed that when concise forms are used there is an express or tacit bargain to abandon entirely the principle of remuneration according to length.” (Preface, p. 6.) Now we have for some time thought that some alteration in this principle of remuneration is expedient, and, at all events, that its propriety should engage the attention of the profession; but the difficulty is to find the proper substitute. What is to be the guiding rule to the Taxing Master on the subject? Mr. Sweet says the old rule is to be abandoned; it is easy to say this, but if he made any inquiry on the point, he would find that although the wish to abandon it has long been general, the profession is not prepared to do so without distinctly understanding what they are to get instead.

Altogether, we must be permitted unwillingly to say, that it would have been more discreet on the part of Mr. Sweet to have waited till the act for amending the Transfer of Property Act was passed, before undertaking this publication.

This act will not probably pass until the end of the session. It will, if we mistake not, provoke considerable discussion; and no one can say in what form it will ultimately stand.

## NEW BILLS IN PARLIAMENT.

## CHATTEL INTERESTS (REAL PROPERTY).

THIS is a bill to declare to be valid assignments, surrenders, and releases of chattel interests in real property, made in certain cases.

It recites, that it is the practice in dealings with real estate to assign and surrender terms of years and other chattel interests, and to assign, surrender, or release, charges affecting such real estate, and the title to such assignment, surrender, or release is frequently considered defective or doubtful, on the ground that some probate or administration evidencing the title to such assignment, surrender, or release has not been obtained in the proper court: It is therefore proposed to enact,—

1. That every such assignment, surrender, or release as aforesaid as shall have been executed before, or shall be executed after, this act comes into operation, shall be deemed valid to all intents and purposes whatsoever, notwithstanding any party who shall have made or concurred in making any such assignment, surrender, or release, shall have derived title under a probate or administration (whether general or limited) which shall not have been obtained in the proper court, provided such probate or administration shall have been granted before the first day of January, 1845.

2. That this act may be amended or repealed by any act to be passed in the present session of parliament.

## ACTIONS OF DEBT LIMITATION.

THIS is a bill for further limiting the time within which actions of debt, grounded on any lending or contract without specialty, may be commenced.

It recites that, by an act passed in the twenty-first year of his late Majesty King James the First, it was among other things enacted, that all actions of debt grounded upon any lending or contract without specialty shall be commenced and sued within six years after the cause of such action or suit, and not after: And that it is expedient that the time for commencing such actions or suits should be further limited; it is therefore proposed to enact,—

That all actions of debt grounded upon any lending or contract without specialty made after the thirty-first day of December next shall be commenced and sued for within four years after the cause of such action or suit, and not after.

## SHERIFFS (WALES).

THIS is a bill for assigning sheriffs in Wales.

It recites, that it is convenient that the sheriffs in each of the shires in Wales be nominated and appointed in like manner as is used in other parts of England: It is therefore proposed to enact,—

1. That after the passing of this act the

sheriffs in each shire in Wales shall be assigned, ordained, nominated, and appointed at the same time and place and in like manner and form as is used according to law for sheriffs in the shires of England.

2. That this act may be amended or repealed by any act to be passed in this session of parliament.

## ALTERATION OF THE CIRCUITS AND TERMS.

THE following is a copy of the commission for inquiring into the expediency of *altering the circuits of the judges in England and Wales*, and (as we intimated last December) inquiring also whether there should be any change in the *law terms*:—

“Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To our right trusty and well-beloved councillor Sir James Parke, Knight, one of the Barons of our Court of Exchequer; and our trusty and well-beloved Sir Edward Hall Alderson, Knight, one other of the Barons of our Court of Exchequer; Sir John Taylor Coleridge, Knight, one of the Justices of our Court of Queen’s Bench; and James Stuart Wortley, Fitzroy Kelly, William Wheateley, and John Greenwood, Esquires; and Sir William Heathcote, Baronet; and Edmund Denison and Thomas Grimston Bucknall Estcourt, Esquires; greeting:

“Whereas it has been humbly represented unto us that the circuits of the judges in England and Wales are very unequal, as well in extent as with respect to the number of causes tried upon such circuits respectively, and that the intervals between the periods of holding the same in each year are also very unequal, and that it has been considered that some alteration in these particulars might be conducive to the public good.

“Now know ye, that we, being satisfied of your knowledge and ability, have appointed and do by these presents appoint you the said Sir James Parke, Sir Edward Hall Alderson, Sir John Taylor Coleridge, James Stuart Wortley, Fitzroy Kelly, William Wheateley, John Greenwood, Sir William Heathcote, Edmund Denison, and Thomas Grimston Bucknall Estcourt, or any five or more of you, to be our commissioners for inquiring and considering whether it would be expedient, with a view to the more convenient and better administration of justice, that any and what alterations should be made in the division of England and Wales into circuits for judicial business, and in the periods for holding such circuits, and whether it would be necessary or proper that any change should be made in the law terms for the purpose of such alterations, and also for considering in what manner such alterations may be best effected.

“And for the better effecting the purposes of this our commission, we do by these pre-



sents give and grant to you, or any five or more of you, full power and authority to call before you, or any five or more of you, such persons as you shall judge necessary, by whom you may be the better informed on the subject of this our commission, and every matter connected therewith; and also to call for, have access to, and examine all such official books, documents, papers, and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

"And it is our further will and pleasure, that you, or any five or more of you, do report to us in writing, under your hands and seals, your several proceedings by virtue of this our commission, together with your opinions touching the several matters hereby referred for your consideration.

"And we will and command, and by these presents ordain, that this our commission shall continue in full force and virtue, and that you our said commissioners, or any five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

"Given at our court at St. James's, the fourteenth day of February, one thousand eight hundred and forty-five, in the eighth year of our reign.

"By her Majesty's command,

"(Signed) J. R. G. GRAHAM."

## PARLIAMENTARY RETURNS.

### CLERKS TO ATTORNEYS.

A RETURN of the number of articles of clerkship, and of assignments thereof, filed in his late Majesty's Court of King's Bench and her present Majesty's Court of Queen's Bench, in each year from the first day of Easter Term 1833 to the 28th day of February 1845, and distinguishing the university graduates:—

	No. of Articles.	No. of Assignments.
From the first day of Easter Term 1833 to the 14th day of April 1834, including 3 university graduates . .	585	160
Ditto, 1834 to 1835, including 4 university graduates . .	577	158
Ditto, 1835 to 1836, including 7 university graduates . .	558	159
Ditto, 1836 to 1837, including 1 university graduate . .	518	148
Ditto, 1837 to 1838, including 4 university graduates . .	463	171
Ditto, 1838 to 1839, including 3 university graduates . .	469	168
Ditto, 1839 to 1840, including 7 university graduates . .	457	145
Ditto, 1840 to 1841, including 6 university graduates . .	486	126

Ditto, 1841 to 1842, including 5 university graduates . .	469	135
Ditto, 1842 to 1843, including 5 university graduates . .	498	121
Ditto, 1843 to 1844, including 6 university graduates . .	483	95
Ditto, 1844 to 28th February 1845, including 4 university graduates . . . .	432	91

(Signed) FORTUNATUS DWARRIS.  
A. D. CROFT.  
R. GOODRICH.  
JAMES BUNCE.  
C. R. TURNER.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister-at-Law.]

SOLICITOR AND CLIENT. — TAXATION OF COSTS. — CONSTRUCTION OF 6 & 7 VICT. c. 73.

*If a bill of costs be delivered at a period when the items in it cannot be examined or discussed, and a material item is objected to, which is apparently an overcharge, there are such special circumstances as warrant the court in making an order, under the 37th section of 6 & 7 Vict. c. 73.*

*The court will form its decision upon the circumstances which bear upon the act, and not with reference to the decisions in cases heard previously to its passing.*

IN this case a petition was presented by Elizabeth Driver, the executrix of her late husband, who was the mortgagor of certain premises in the petition mentioned, to tax the bill of costs of Mr. William Wells, the solicitor for the mortgagee, incurred in relation to the transfer of the mortgage to a new holder of it. The bill amounted to 19*l.* 1*s.* 9*d.*, and the principal item objected to was, a charge of 4*l.* 4*s.* for preparing an abstract which, it was insisted on the part of the petitioner, was unnecessary, and that a copy of the deed of transfer was all that could be required. On the parties attending to complete the business, the bill of costs in question was produced, when the clerk of the mortgagor's solicitor objected to the charge of 4*l.* 4*s.*, as well as some other charges in the bill, and requested that the business might stand over for a day or two in order to allow time for a full examination of the bill; but this was refused, as was also any abatement from the amount; whereupon the sum demanded was paid, under protest, and the present petition presented.

Mr. Goodere, for the petition, said there was no pretence for the charge made for the abstract, and there were also other charges that could not be supported. If the settlement of

the bill had been allowed to stand over, as was proposed, they might have been rectified, and the refusal of this indulgence was such a special circumstance as justified the court in sending the bill for taxation.

Mr. Turner, contra, said the court had no authority to order taxation after payment of a bill, unless under special circumstances; and in order to bring a bill within the rule, there must not only be an overcharge, but the party objecting must show something amounting to fraud. *Smith v. Horlock*, 2 Myl. & Cr. 495; *Waters v. Taylor*, *ibid.* 527; but in this case such circumstances were wholly wanting. The only item objected to was the charge of 4 guineas for the abstract, and the other items in the bill must be admitted to be extremely moderate, the charges for attending being in many instances only 3s. 4d. instead of 6s. 8d. Besides which, the mortgagor was attended by his own solicitor, who might have advised him not to pay the bill if he thought it objectionable. At all events, if it went to the Master, the solicitor ought to have the liberty of remodelling the bill so as to have the full benefit of all fair charges.

The Master of the Rolls said that an objection had been made to this petition, on the ground that if an order of reference were made it would, as a general principle, operate unjustly, because there were no special circumstances shown to call for the interference of the court. In this his lordship said he did not concur, for there were several special circumstances which called for particular notice. The first special circumstance was, that the bill was delivered and settled at a time when it was difficult to examine or discuss the charges it contained. The second special circumstance was, that a material item in the bill was objected to, and a request was made to let the settlement stand over for a day or two, which was refused. And the third special circumstance was, that there was apparently an overcharge which it was proper to inquire into. His lordship said he did not intend to make any reflection upon the conduct of the solicitor, for the other charges seemed very moderate; but that was no reason why the item objected to should not be inquired into. In forming its decision, the court must take into consideration the circumstances as they bore upon the act, and not with reference to cases decided previously to the act being passed. Whether the petitioner would obtain any benefit from the reference might be questionable, for the costs of the application would depend upon the result of the inquiry before the Master; and it must be part of the terms of the order that the Master should be at liberty to state special circumstances.

*Ex parte Wells*, March 4th, 1845.

Vice-Chancellor of England.

[Reported by SAMUEL MILLER, Esq., Barrister-at-law.]

PRACTICE.—PAYMENT OF MONEY INTO COURT.—ADVANCES FOR COSTS.

An executor will not be ordered to pay into

court a sum of money admitted by his answer to have been received by him, if he swear that he has paid it to his solicitor towards the costs of the suit, and it appear that the amount is not unreasonable, although it may have been paid after the institution of the suit, and the bill charges that he is a defaulting executor.

THIS was a motion for production and for payment into court of a sum of 3,000l., admitted by the answer of the defendant to have been received by him, and for the production of documents. The suit was instituted for the administration of a testator's estate, and the bill charged that the defendant, who was his executor and trustee, had been guilty of various breaches of trust, and prayed the usual accounts.

Mr. Bigg, in support of the motion, said that the sum in question had been paid into the Tunbridge Bank, and that the defendant had, since the institution of the suit, drawn out a sum of 70l., which he had paid to his solicitor, as he alleged, towards the costs of the suit; but as the defendant was a defaulting executor, such a payment could not be justified, for if that were allowed to be done, a defendant, however culpable, might always screen himself from the costs of the suit, and give his solicitor the benefit of them. He also claimed credit for a sum of 61l., which had been paid in like manner for a debt and costs, although he had not been called upon or required to pay it.

Mr. Hardy, contra, said the defendant referred by his answer to the first schedule annexed to it, as containing an account of the several sums paid by him, and by that it appeared that, including the sums of 61l. and 70l. which he was perfectly justified in paying as he did, the whole 300l. was accounted for.

The Vice-Chancellor said that the defendant was entitled to make the payments objected to, and as it appeared by the schedule to his answer that he had paid away the whole 300l., the order must be confined to the production of the documents.

Anon. January 31st, 1845.

Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister at Law.]

LIBEL.—EVIDENCE OF MALICE.

In an action of libel for imputing that the plaintiff had been guilty of embezzlement, the defendant pleaded not guilty, and a plea justifying the charge: the only question left to the jury was, whether under the circumstances the letter in which the libel was written was a privileged communication: Held, that, in the absence of all other evidence of malice on the part of the defendant, the fact of putting the plea of justification on the record, and not abandoning it till the time of the trial, was not alone evidence from which the jury might infer the defen-

*dant was actuated by malicious motives when he wrote the libel, and that it was no misdirection in the learned judge to refuse to leave to the jury the question of malice on such evidence.*

THIS was an action of libel, tried before Mr. Justice Wightman, at the last assizes for the county of Durham. The libel was contained in a letter which imputed to the plaintiff that he had been guilty of embezzlement. The defendant pleaded two pleas: 1, Not guilty; 2, a justification, alleging that the plaintiff had been guilty of embezzlement. The plaintiff was employed as the captain of a vessel which belonged to the defendant and A. B. The partnership between these persons with respect to this vessel was afterwards dissolved. Some months after the dissolution of the partnership, the defendant wrote the letter containing the libel complained of to A. B. At the trial, the defendant abandoned the plea of justification, and rested his defence on the plea of not guilty. The learned judge left it to the jury to say whether this letter was a privileged communication by the defendant to a person who had previously been his partner. For the plaintiff it was contended, that there was evidence to be left to the jury that the defendant was actuated by malicious motives at the time he wrote the letter, and that malice might be inferred from the fact of the defendant putting a plea of justification on the record and then abandoning it at the trial. The learned judge refused to leave this evidence of malice to the jury, who returned a verdict for the defendant.

Murphy, Serjeant, applied for a rule to show cause why there should not be a new trial, on the ground of misdirection. The fact of putting the plea of justification on the record and afterwards abandoning it at the trial, was evidence from which the jury might infer that the defendant was actuated by malicious motives against the plaintiff at the time he wrote the letter. The case of *Warwick v. Foulkes*\* was an action of trespass and false imprisonment; the defendant pleaded, by way of justification, that the plaintiff had committed a felony. It was held to be no misdirection for the judge to tell the jury that the putting such a plea on the record was a persisting in the charge contained in it, and was to be taken into account by them in estimating the damages. Lord Abinger there said: "The putting the plea on the record is, under the circumstances, evidence of malice, and a great aggravation of the defendant's conduct, as showing an animus of persevering in the charge to the very last. A justification of a false imprisonment on the ground that the defendant had reasonable and probable cause to suspect that the plaintiff had been guilty of felony, is very different; such a justification is in the nature of an apology for the defendant's conduct." The case of *Warren v. Warren*† was also cited.

Lord D. M. man, C. J.—That is "where the case is proved. You say that under a different state of circumstances the putting the plea of justification on the record was evidence of malice; that is perfectly new, and not what Lord A. binger meant.

*Pattison, Williams, and Wightman, Ja., concurred.*

Rule refused.

*Wilson v. Robinson*, Easter Term, 1845.

#### MANDAMUS.—QUARTER SESSIONS.—SUPPORT- CIENCY OF AFFIDAVIT.

*An order of removal of a pauper from K. to C. was served on the parish officers of C. in May 1844. They gave notice to try the appeal at the next sessions, but did not appear to enter the appeal or countermand the notice, and the sessions made an order on them for costs. In August the pauper was removed; whereupon the parish officers of C. gave fresh notice to try the appeal at the Michaelmas sessions. Those sessions commenced on the 16th of October. On the 17th, the appellants applied to the sessions to allow them to enter and try their appeal, which application the sessions refused. On an application for a mandamus to the justices to enter and try the appeal, on an affidavit stating these facts,—*

*Held, the affidavit was insufficient, as the court would not presume that the justices did wrong, and that it was consistent with such statements that the application to enter the appeal was not in time, according to the practice of the sessions.*

A RULE nisi had been obtained for a mandamus to the justices of the county of Warwick, to command them to enter continuances and hear an appeal against an order of two justices for the removal of a pauper, his wife, and six children from the parish of Kingsbury to the parish of Coleshill, both in the county of Warwick. It appeared on affidavit that in May 1844 the order of removal, with the examinations, &c., was served by the parish officers of Kingsbury on the parish officers of Coleshill, who, on the 12th of June, served notice of grounds of appeal against the said order, and of their intention to try the appeal at the next general quarter sessions for the Coventry division of Warwickshire. Those sessions were held at Coventry on the 4th of July, but the appellants did not appear to enter their appeal or countermand their notice. The respondents appeared in support of the order, and applied to the sessions for an order for their costs, under the 8 & 9 Will. 3, c. 30, s. 3, which was accordingly made, and served on the appellants on the 12th of July, and the costs paid. On the 19th of August the paupers were removed to Coleshill under the order. On the 30th of September the appellants served a fresh notice of grounds of appeal against the order, and of their intention to prosecute and try the appeal at the next general quarter sessions for the said

\* 12 Mee. & Wel. 507.

† 1 Cr. Mee. & Ros. 250.

division. The next sessions were held at Coventry on the 16th of October. On the 17th the appellants attended for the purpose of entering their appeal at the office of the clerk of the peace, who refused to enter it; they afterwards, on the same day, applied to the sessions by their counsel to enter the appeal, but the sessions refused to enter or to allow the same to be tried.

Mr. Hayes and Mr. Mellor showed cause.

This court will not grant a mandamus except in cases where it is made to appear an inferior court has refused to do that which by law it is bound to do. The affidavit on which the rule was obtained does not disclose a *prima facie* case to show that the sessions were wrong. It only states that the appellants attended at the sessions on the 17th of October, and that the court refused to allow the appeal to be entered. The sessions, it appeared, commenced on the 16th of October, and the affidavit does not state on what ground the sessions refused; whether it arose from a non-compliance with their rules of practice does not appear. If the sessions had a discretion in the matter this court will not interfere. As in a motion for a mandamus under railway and similar acts, a distinct demand and refusal of specific works is required, so in these cases the applicant must state the reason of the refusal, or at all events, disclose sufficient facts to show this court that the sessions were wrong. The affidavit therefore is defective for not showing in what way the sessions were wrong in refusing to allow the appeal to be entered and tried.

Mr. Spooner, in support of the rule.

This affidavit is sufficient, provided the reason of the refusal on the part of the sessions may be collected from the whole of it. Here it is quite clear that the sessions refused to enter the appeal, not on the ground that the application was not in time according to the practice of the court, but on the ground that the right of appeal was gone altogether. That fact sufficiently appears on this affidavit, and this court will not presume that the refusal was for other reasons than those stated.

Lord Denman, C. J.—This affidavit is insufficient. The appellants ought to have shown that they came in time according to the practice of the sessions. It is not to be presumed that the justices did wrong; if any presumption is to be made, it must be in their favour. It is quite consistent with this statement that they were right, and that the appellants came too late to enter their appeal, according to the practice of the sessions.

Patteson, Coleridge, and Wightman, Js., concurred. Rule discharged, with costs.

*The Queen v. the Justices of Warwickshire*, Hilary Term, 1845.

#### Queen's Bench Practice Court.

[Reported by E. H. WOOLRYCH, Esq., Barrister at Law.]

#### ATTORNEY.—HIS CONDUCT.—FORM OF RULE.

*The court will not call upon an attorney in*

*the same rule to show cause why he should not be struck off the roll or answer the matters of the affidavit. Each branch of the motion must be the subject of a distinct application.*

Charnock applied for a rule calling upon an attorney to show cause why he should not be struck off the rolls, or why he should not answer the matters of the affidavit.

Williams, J.—The rule will not be granted in the alternative. You may take it in one or other of its branches, but not in both.

Charnock then stated the substance of his affidavit, and the court granted a rule nisi to answer the matters of the affidavit.

*Benton v. Earl of Chesterfield*. Q. B. P. C. Hilary Term, 1845.

Petersdorff moved for a rule to show cause why an attorney should not answer the matters of the affidavit, and why he should not be struck off the roll.

Coleridge, J.—The Master suggests that the two cannot be united in one rule.

Rule nisi to answer the matters of the affidavit.

Re ———. Q. B. P. C. Easter Term, 1845.

## POINTS FROM CONTEMPORANEOUS REPORTS.

### BANKRUPTCY.

#### HOW FAR AN ORDER ANNULLING A FIAT OPERATES RETROSPECTIVELY.

ONE of the rare instances of a miscarriage in point of law by Lord Chancellor Eldon appears to have occurred in a department with which it is well known that he was peculiarly familiar. In the late case of *Smallcombe v. Olivier*, before the Court of Exchequer, (13 Mee. & Wel. 77,) this question arose, and was very copiously debated, namely, whether, upon an order of the Lord Chancellor superseding a fiat in bankruptcy, it should be held that the effect was to annul the bankruptcy from the beginning. By the 19th section of the 1 & 2 Will. 4, c. 56, establishing the present court of bankruptcy, and substituting fiats for commissions under the great seal, it is enacted, that an order of the Lord Chancellor annulling a fiat shall have the same effect as a writ of superseas of a commission according to the then existing law and practice in bankruptcy. So that the question really came to be—what, under the old law, was the effect of such a superseas? Now it clearly was Lord Eldon's opinion that a superseas replaced everything *in statu quo*; for in *ex parte Jackson* he said the consequence of a superseas was, "that everything done under the commission would be void, and every discharge given under it." The superseas, he held, put an end not merely to everything done under the commission, but

restored things *in integrum*, as if it had never issued. The judges of the Court of Exchequer dissented from this doctrine. The Lord Chief Baron, in delivering the opinion of the court, observed, "The position maintained by the plaintiff's counsel, that the supersedeas annulled everything, and put the bankrupt and his estate, his debtors and his creditors, in precisely the same situation as if no commission had been issued, is certainly very startling. While the commission was in force the assignees might bring an action against the bankrupt's debtor, and compel that debtor to pay to them the debt which he owed to the bankrupt; and yet, according to the argument we are now considering, the debtor, in the event of a supersedeas, might be compelled to pay the debt over again to the bankrupt. Again, the assignees contract to sell the bankrupt's real estate; the purchaser may be compelled to pay to them his purchase money, and accept a conveyance: and yet, should the bankruptcy afterwards be superseded, that purchaser may be wholly deprived of his property. But there are other more extravagant consequences which would follow from this doctrine. If the bankrupt does not duly surrender at the time required by the statutes, he is guilty of a felony, now punishable by transportation for life, but which formerly was capital: and yet what is contended for is, that before conviction it is in the power of the Lord Chancellor to convert, by a supersedeas of the bankruptcy, that which was a capital felony into a perfectly innocent act. Suppose, while the fiat is in force, that the bankrupt has omitted to surrender, and has so committed felony; it may then become necessary for a peace-officer to use force towards him in order to his apprehension, and, under certain circumstances, even to take away his life if he cannot otherwise be taken. Can it, in such a state of circumstances, be possible for the Lord Chancellor, simply by annulling the fiat, to make a man a criminal and a murderer who at the time of the act done did no more than his duty? These, no doubt, are extreme cases, but they serve to test the correctness of the proposition contended for, which undoubtedly leads to all the strange consequences pointed out, and to many others equally absurd." The court, therefore, differing from Lord Eldon, gave judgment accordingly. Unless, therefore, the order annulling a fiat in bankruptcy proceeds on some ground which rendered it void *ab origine*, its operation commences from the date of the Chancellor's order; and it does not restore things to their state before the issuing of the fiat.

*Irish Commissioners of Charitable Donations v. Devereux*, 13 Sim. 14; *Thomson v. Her Majesty's Advocate-General*, 13 Sim. 153.

#### TESTATOR DOMICILED ABROAD. — LEGACY DUTY NOT DEMANDABLE.

The question whether legacy duty is payable

or not in the case of a testator dying in foreign parts, depends not upon the question whether at the time of his death he owed allegiance to the Crown of Great Britain, but upon the fact of his *domicile*. A Frenchman may have resided so long in this country, may have so completely abandoned all intention of returning to his own soil, that his domicile will be considered at his death to have been to all intents and purposes a British domicile, (although his allegiance continued to be French); so as that all question relative to his personal estate will have to be determined by the law of this country. In such a case legacy duty will be demandable at his decease; on the other hand, an Englishman may, without forfeiting his allegiance, so completely transfer himself to another state as to change his original domicile; and in such a case, on his death no legacy duty will accrue. Till lately, these questions were somewhat unsettled; but in the two cases placed at the head of this article their merits were very largely discussed, and the ultimate decision of the House of Lords in the second of them must be regarded as settling the controversy entirely and finally at rest. In 1769, James Fanning, a native of Ireland, took up his permanent residence in France, so as to become from thenceforth domiciled in that country, where he soon purchased landed property, and, prior to the Revolution, had the honours of nobility conferred upon him by the title of *Le Comte Fanning*. When the "Reign of Terror" commenced he came to England; whereupon all his property, real and personal, was instantly confiscated by the new French government. On the 15th January, 1802, the count made his will in London, describing himself as proprietor of the estate of La Roche Talbot, in France, and as then lodging in a house near Manchester Square, (a description which manifestly imported that he was here, not *animo remanendi*, but *animo revertendi*). In 1802, accordingly, he returned to France, his adopted country, where he resided until his death. On the 17th September, 1804, it appears that he made another will, and afterwards his two testamentary papers were duly proved in France, and also in the Prerogative Court of Canterbury, by the defendant *Devereux*. In this state of matters, a claim was set up on behalf of the Crown for legacy duty in respect of bequests in the will. After copious argument, the *Vice-Chancellor of England* observed: "We have here a foreign domicile, a foreign will, and foreign property. It appears to me, therefore, to be perfectly plain that legacy duty is not payable in this case."

The case to the same effect placed second at the head of this statement is of more recent date, and is still more authoritative; because it is a determination of the House of Lords, delivered after taking the opinions of the Queen's Judges. The question in this last case came originally before the Court of Session in Scotland; but as it turned on the same statute as that which operates in this country, the Lords held the law respecting it was neces-

sarily the same on both sides of the Tweed. We rather think, indeed we are pretty confident, that this is the first instance in which the English judges were ever called upon to advise the House of Lords on a Scotch appeal or writ of error. It is not necessary to state of the facts, more than that one John Grant died domiciled in Demerara, leaving funds in the Royal Bank of Scotland. By his will he left certain legacies to persons in Scotland, and the residue of his estate he bequeathed to others resident in the colony. The Crown, by its officers, claimed legacy duty in respect of the funds in Scotland. This claim was resisted on the ground that, as the law of the testator's domicile at the time of his death ruled all questions respecting his personal estate, no duty was demandable, for such duty was unknown to the law of Demerara. The Scotch court gave judgment in favour of the Crown, but the House of Lords reversed this decision; and as the grounds of that reversal are admirably expounded by the *Lord Chancellor*, we cannot do better than give his lordship's words: "My lords,—In consequence of something that was thrown out at your lordship's bar, I think it proper to state, that it was not from any serious doubt or difficulty which we considered to be inherent in this question that we thought it right to ask the opinion of the judges, but it was on account of its extensive nature, and because the question applied only to *Scotland* in the form in which it was presented to your lordships' house; whereas, in reality and in substance, it applies to the entire kingdom, not only to *Great Britain*, but, in substance, to *Ireland*, and to all the British possessions. We thought, therefore, that it was proper to request the attendance of her Majesty's judges. The operation of the statute is limited to *Great Britain*. It does not extend to *Ireland* nor to the colonies. And it was determined in *re Bruce*, (2 *Crom. & Jer.* 436,) that it does not apply to the case of a foreigner residing abroad, and a will made abroad, although the property may be in England, although the legatees may be in England, and although the property may be administered in England. Also, my lords, it has been decided, in the case of British subjects domiciled in India and having large possessions of personal property in India, that legacy duty is not demandable; although the property may have been transmitted to this country by executors in India to executors in this country for the purpose of being paid to legatees in England. But it is said that in this case a part of the personal property was in Scotland. That can make no difference. The personal property must follow the law of the domicile; and it is admitted that if it was property within the domicile of the testator in Demerara, it cannot be subject to legacy duty. I shall therefore move that the judgment of the court in Scotland be reversed." Agreed to.

*Brown v. Williamson*, 13 *Mec. & Wel.* 14.

#### PROMISSORY NOTE.—SURETY.

ALL cases calculated to elucidate the grounds on which sureties may be relieved from their obligation, are instructive and interesting, from the natural leaning which both law and justice entertain in their favour. In the above instance, an action of assumpsit was brought by the payee against one of the co-makers of a promissory note, who had accepted it as surety. In defence, a plea was put in, that the note was made by the defendant, jointly and severally with and as surety for one Atkinson, to secure repayment of a loan of 20*l.*, advanced by the "*Holborn Loan and Investment Society*," in the ordinary course of their business, according to which the same was to be gradually made good, by means of instalments of 8*s.* per week; and that a discount of 2*s.* in the pound was to be charged by the said society, and no more, which was to be deducted from the principal sum at the time of the advance, whereas the said company made a charge in respect of discount of no less than 12*s.* in the pound.

Upon demurrer and joinder in demurrer.

The *Lord Chief Baron* said, "I am of opinion that this plea is bad. It does not appear from it that there was a separate contract made with the principal, different from that made with the surety. It is merely averred that the bargain was made between the society and the principal on the usual terms; and then, that the society without the defendant's consent, deducted a larger sum by way of discount. The plea does not state that he became surety on the faith of the ordinary rules of the society being observed. For aught that appears, he may have signed the note after the money was advanced, without knowing anything of the rules of the society, or making any inquiry about them." The other judges concurred.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From March 25th to April 18th, 1845, both inclusive, with dates when gazetted.

Burd, George, Birmingham. March 28.  
Inglesant, Joseph, Loughborough, Leicester. March 28.

Randa, George, Northampton. April 11.  
Sisson, Robert James, St. Asaph, Flint. April 1.

#### DISSOLUTION OF PROFESSIONAL PARTNERSHIPS.

From March 25th to April 18th, 1845, both inclusive, with dates when gazetted.

Edge, Samuel, and William Brooms Parker, Manchester, Attorneys and Solicitors. March 28.  
Freer, William, and Edward M. Freer, Attorneys and Solicitors. April 15.  
Little, William Joseph, and Thomas Robert Hearle, Devonport, Attorneys and Solicitors. April 15.

Otter, Francis, and Thomas Oldman, Gainsborough, Yorkshire, Attorneys and Solicitors. March 25.  
 Tomlinson, Frederick Wright, and William Keary, Stoke-upon-Trent, Attorneys and Solicitors. April 4.

### BANKRUPTCIES SUPERSEDED.

*From March 25th to April 18th, 1845, both inclusive, with dates when gazetted.*

Boulter, Thomas, Tucker's Hotel, Cromer, Norfolk, Innkeeper. March 28.  
 Bowring, Edward, Lawrence Lane, Cheapside, Merchant. April 8.  
 Fielding, William, Taunton, near Ashton-under-Lyne, Lancaster, Hat and Plush Manufacturer. April 4.  
 Flint, Algernon Lindsay, 62, Aldermanbury, Warehouseman. April 11.  
 Hardwick, William, Holborn, Draper. April 11.  
 Miller, James, Southampton, Boot and Shoe Maker. April 18.

### BANKRUPTS.

*From March 25th to April 18th, 1845, both inclusive, with dates when gazetted.*

Adlington, Thomas, Kingsland, Middlesex, Corn, Seed, and Coal Merchant. Follett, Off. Ass.; Carter & Co., Lord Mayor's Court Office, Old Jewry. April 11.  
 Ayton, Joseph Jobling, South Shields, Linen. Draper. Baker, Off. Ass.; Wilson, South Shields; Hodgson, 32, Broad Street Buildings. April 15.  
 Bant, Joe, 3, Hollen Street, Wardour Street, Soho, Saddle Tree Maker. Belcher, Off. Ass.; A'Beckett & Co., Golden Square. April 18.  
 Barker, Preston, Shelton, Stafford, Publican. Valpy, Off. Ass.; Challinor, Hanley; Mottram & Co., Birmingham. April 15.  
 Benn, William, Wilshe, Liverpool, Merchant. Turner, Off. Ass.; Gregory & Co., Bedford Row; Frodsham, Liverpool. April 15.  
 Bidder, Samuel Parker, Fleetwood-on-Wyre, Lancaster, Civil Engineer. Turner, Off. Ass.; Bridger & Co., London Wall; Dodge, Fenwick Street, Liverpool. April 4.  
 Blackmoor, John, Rotherham, York, Builder. Freeman, Off. Ass.; Moss, Cloak Lane; Ryalls, Sheffield; Blackburn, Leeds. April 11.  
 Bradshaw, Job, St. Albans, Hertford, Draper and Tailor. Groom, Off. Ass.; Walker, Furnival's Inn. April 15.  
 Breckels, John, 2, North Street, Finsbury Market, Bedstead Maker. Belcher, Off. Ass.; Taylor, 12, North Buildings, Finsbury Circus. April 1.  
 Cann, Robert, 6, Brewer Street, Woolwich, Boot and Shoe Maker. Turquand, Off. Ass.; Biggenden, Walbrook. April 1.  
 Chriap, John, Great Tower Street, Wine and Spirit Broker. Alsager, Off. Ass.; Treherne & Co., Barge Yard Chambers, Bucklersbury. March 25.  
 Coffee, Matthew, Liverpool, Victualler. Bird, Off. Ass.; Holme & Co., London; Booker, Castle Street, Liverpool. March 25.

Coggan, Hezekiah Denby, 39, Friday Street, Warehouseman. Johnson, Off. Ass.; Soles & Co., Aldermanbury. April 11.  
 Cook, Henry Polley, Coggershall, Essex, Victualler. Edwards, Off. Ass.; M'Leod & Co., 13, London Street, Fenchurch Street. April 18.  
 Cotterel, James Knight, Glastonbury, Grocer. Kynaston, Off. Ass.; Nash & Co., Glastonbury. April 4.  
 Coyle, Thomas Holbrook, late of Liverpool, and of Argyle Street, Middlesex, Wine and Spirit Merchant. Follett, Off. Ass.; Cross & Co., Surrey Street, Strand. April 18.  
 Currie, John, and Louis Elize Seignette, 26, Mincing Lane, Merchants. Pennell, Off. Ass.; Treherne & Co., Barge Yard Chambers, Bucklersbury. April 4.  
 Day, Charles, 35, Acton Street, Gray's Inn Road, Druggist. Bell, Off. Ass.; Pain & Co., 83, Basinghall Street. April 4.  
 Dingley, Thomas, 2, Strutton Ground, Westminster, Draper. Alsager, Off. Ass.; Dean & Co., St. Swithin's Lane, City. April 4.  
 Dodd, Thomas Steward, Liverpool, Innkeeper. Cazenove, Off. Ass.; Bridger & Co., London Wall; Dodge, Fenwick Street, Liverpool. April 15.  
 Emanas, William, 12, Warwick Square, Newgate Street, and 10, Church Street, Kennington, Bookseller and Publisher. Turquand, Off. Ass.; Lonsdale, Temple Chambers. April 11.  
 Firth, Charles Mousley, 8, St. Michael's Alley, Cornhill, and of 14, Chryssell Road, North Brixton, Lithographic Printer. Johnson, Off. Ass.; Browns, Bedford Row. April 18.  
 Forty, Thomas, Royal Hotel, Richmond, Hotel Keeper. Edwards, Off. Ass.; Weymouth, 89, Chancery Lane. April 11.  
 Gardner, George, Gravesend, Tavern Keeper. Groom, Off. Ass.; Tilson & Co., 29, Coleman Street, City. March 28.  
 Giles, William, Marine Mansion, Marine Parade, Brighton, Boarding-Housekeeper. Johnson, Off. Ass.; Sanford, John Street, Adelphi. April 4.  
 Hartsborn, Henry, Shrewsbury, Salop, Plumber. Whitmore, Off. Ass.; Parker, New Boswell Court; Powell, Moor Street, Birmingham. April 4.  
 Hempsen, Kenrick Frederick Alexander, 16, Walnut Tree Walk, Lambeth, Gasfitter and Machinist. Pennell, Off. Ass.; Smith, Wilmington Square. April 15.  
 Hick, John Atkinson, Leeds, Carver and Gilder. Hope, Off. Ass.; Hawkins & Co., New Boswell Court; Horsfall & Co., Leeds. April 1.  
 Hill, Joseph, Stroud, Hatter. Miller, Off. Ass.; Kearsey, Stroud. April 18.  
 Hodges, William, King's Head Yard, Duke Street, Bloomsbury, Hide and Skin Dealer. Turquand, Off. Ass.; Dale, Furnival's Inn. March 25.  
 Hodgkinson, William, 1, Weston Street, Pentonville, Slater. Belcher, Off. Ass.; Nash, Goswell Road. April 15.  
 Hollingsworth, John, Paddington Street, Marylebone, Butcher. Turquand, Off. Ass.; Gores, South Molton Street. April 8.  
 Home, James, Woodstock Mews, Blenheim Street, New Bond Street, Veterinary Surgeon. Bell, Off. Ass.; Wormald, Gray's Inn Square. April 11.  
 Isherwood, George Frederick Stanley, Hulme, Manchester, Engraver to Calico Printers. Pott, Off. Ass.; Mackinson & Co., Elm Court; Bar-

- low, 22, Brasenose Street, Manchester. April 18.
- Jarman, William Elworthy, High Street, Exeter, Confectioner. *Hernaman*, Off. Ass.; *Stogdon*, Exeter; *Keddell & Co.*, Lime Street. March 25.
- Jarvis, Joseph and James, Great Bush Lane, Cannon Street, Wine and Spirit Merchants. *Green*, Off. Ass.; *Gale*, Basinghall Street. April 15.
- Johnston, Laing, Hammersmith, Wine Merchant. *Whitmore*, Off. Ass.; *Lonsdale*, Temple Chambers, Fleet Street. March 28.
- Jones, Thomas, Liverpool, Coal Dealer. *Bird*, Off. Ass.; *Parker & Co.*, Bedford Row; *Greatley*, Liverpool. April 18.
- Jones, John, Pinchbeck, Lincoln, Butcher. *Christie*, Off. Ass.; *Bonner & Co.*, Spalding; *Motteram & Co.*, Birmingham. April 15.
- Jones, William, late of the Adelaide Gallery, Strand, Commission Agent. *Belcher*, Off. Ass.; *Crouch*, Southampton Buildings, Chancery Lane. April 15.
- Jones, James, Chester, Fellmonger. *Morgan*, Off. Ass.; *Bridger & Co.*, London Wall; *Dodge*, Fenwick Street, Liverpool; *Grocott*, Exchange Street, East, Liverpool. March 25.
- Kilford, Thomas, Southampton, Cabinet Maker. *Graham*, Off. Ass.; *Dolman*, Clifford's Inn; *Wright*, London Street, Fenchurch Street. April 8.
- Lagoe, William Harrington, Atherstone, Warwick, Victualler. *Valpy*, Off. Ass.; *Harrison & Co.*, Birmingham. April 1.
- Lambert, John, Portsmouth Street, Lincoln's-Inn-Fields, Victualler. *Alsager*, Off. Ass.; *King*, St. Mary Axe. April 8.
- Lampard, John, 9, Stanhope Street, Clare Market, Printer and Publisher. *Edwards*, Off. Ass.; *Vandecom & Co.*, Bush Lane, Cannon Street. April 4.
- Leader, John Morgan, 361, Oxford Street, Coach Maker. *Graham*, Off. Ass.; *Bailey & Co.*, Berners Street, Oxford Street. April 15.
- Lediard, William, Watling Street, Wellington, Salop, Coach Proprietor. *Valpy*, Off. Ass.; *Harrison & Co.*, Birmingham. March 25.
- Litten, Randall P., 1, Newmarket Place, Church Road, Kingsland, Grocer. *Groom*, Off. Ass.; *Egan*, 58, Lincoln's-Inn-Fields. April 11.
- Long, Joseph, Tavistock, Devon, Linen and Woolen Draper. *Hirtzel*, Off. Ass.; *Turner*, Castle Street, Exeter; *Spyer*, Broad Street, Buildings. April 18.
- May, Elijah, 34, Aldgate High Street, Draper. *Green*, Off. Ass.; *Mardon & Co.*, Newgate Street. March 28.
- May, Samuel, 51, Myddleton Street, Clerkenwell, Watch Manufacturer. *Groom*, Off. Ass.; *Thwaites*, 4, Lyon's Inn, Strand. March 25.
- Martyn, Charles, Durham, Linen Draper. *Baker*, Off. Ass.; *Abbott*, 10, Charlotte Street, Bedford Square; *Thompson*, Durham; *Bennett & Co.*, Manchester. March 25.
- McKnett, Elizabeth, and James Glass, Belvidere Road, Lambeth, and Blackfriars Road, Coal Merchants. *Graham*, Off. Ass.; *Freeman & Co.*, Coleman Street. April 8.
- Morton, Daniel, 18, Eastcheap, Fishmonger. *Pennell*, Off. Ass.; *Bell*, 24, Austin Friars. March 28.
- North, Joseph, Hightown, Birstal, York, Blanket Manufacturer. *Young*, Off. Ass.; *Chadwick*, Dewsbury; *Boad*, Albion Street, Leeds. April 1.
- Overend, Hannah, Popplewell, in Scholes, Cleck-  
heaton, Birstal, York, Card Maker. *Fearne*, Off. Ass.; *Wiglesworth & Co.*, Gray's Inn; *Cronhelm*, Leeds. April 15.
- Overend, Thomas, Walcot Square, Malster, Scrivener and Attorney. *Bell*, Off. Ass.; *Milne & Co.*, Temple. March 25.
- Parsons, William, Temple Street, Bristol, Brewer. *Acraman*, Off. Ass.; *Leman*, Bristol. April 18.
- Pattinson, William, Birchall, Liverpool, Currier and Leather Seller. *Morgan*, Off. Ass.; *Vincent & Co.*, Temple; *Jones*, Dorans Lane, Lord Street, Liverpool. April 15.
- Paulton, John, 2, High Street, Portland Town, Marble and Stone Mason. *Whitmore*, Off. Ass.; *Letts*, 8, Bartlett's Buildings. April 4.
- Payne, George, King Street, Covent Garden, Tailor and Draper. *Belcher*, Off. Ass.; *Wood & Co.*, 78, Dean Street, Soho. April 11.
- Philips, John, Pinner's Court, Old Broad Street, Tailor. *Bell*, Off. Ass.; *Cor*, Pinner's Hall. March 28.
- Pickering John, 6, Cornbury Place, Old Kent Road, Dealer. *Bell*, Off. Ass.; *Desborough & Co.*, 6, Size Lane. April 18.
- Poynter, William, Upper Holloway, and 34, St. Paul's Churchyard, Warehousman. *Pennell*, Off. Ass.; *King*, St. Mary Axe. April 11.
- Pritchard, John, Lilleshall, Salop, Builder. *Bittleston*, Off. Ass.; *Haane*, Newport, Salop; *Motteram & Co.*, Bennett's Hill, Birmingham. April 11.
- Radcliffe, Augustus, sen., and Augustus Radcliffe, jun., 61, Hermitage Place, St. John's Street, Road, Patent Glaziers' and Artists' Diamond Manufacturers. *Graham*, Off. Ass.; *McLeod & Co.*, 13, London Street, Fenchurch Street. April 1.
- Reay, John, and John Robert Reay, Mark Lane, Wine Merchants. *Trehern & Co.*, Barge Yard Chambers, Bucklersbury. April 1.
- Rees, Thomas Popkins, Crooked Lane Chambers, King William Street, Iron Merchant. *Alsager*, Off. Ass.; *Lawrence & Co.*, 32, Bucklersbury. April 18.
- Riky, John, Liverpool, Merchant. *Turner*, Off. Ass.; *Bridger & Co.*, London Wall; *Dodge*, Fenwick Street, Liverpool. March 25.
- Robinson, Benjamin, Burton-upon-Trent, Stafford, Draper. *Christie*, Off. Ass.; *Richardson & Co.*, Burton-upon-Trent. March 25.
- Robinson, Edward Edwards, Wolverhampton, Grocer. *Bittleston*, Off. Ass.; *Capes & Co.*, Gray's Inn; *Robinson*, Wolverhampton. April 8.
- Schaffer, John, 16, Clark's Place, High Street, Islington, Fringeman. *Johnson*, Off. Ass.; *Humphreys*, 67, Newgate Street. April 1.
- Shefford, John, High Street, Camberwell, Hay and Corn Merchant. *Green*, Off. Ass.; *King*, St. Mary Axe. April 8.
- Simpson, Alexander Horatio, and Peter Hunter Irvin, 233, Blackfriars Road, Engineers. *Follett*, Off. Ass.; *Kell*, Bedford Row. April 11.
- Simpson, Alexander Horatio, Blackfriars Road, Engineer. *Follett*, Off. Ass.; *Michael*, Red Lion Square. April 4.
- Smith, Edward, South Molton Street and Oxford Street, Cheesemonger. *Johnson*, Off. Ass.; *Pain & Co.*, Basinghall Street. April 8.
- Smith, John, Barnoldswick, Yorkshire, Cotton Manufacturer. *Young*, Off. Ass.; *Wiglesworth & Co.*, Gray's Inn; *Barr & Co.*, Leeds; *Hartley & Co.*, Settle. April 8.
- Spence, William, Whittaker, Newcastle-upon-Tyne,



Woollen Draper. *Wakley*, Off. Ass.; *A'Beckett & Co.*, 7, Golden Square. April 15.

Sprague, John Warden, Poole, Dorset, Grocer. *Turquand*, Off. Ass.; *Wilkins*, Furnivals Inn. April 18.

Sterry, William Bristow, Jamaica Row, and Bermondsey Wall, Bermondsey, Sail Maker. *Whitmore*, Off. Ass.; *Brown*, Walbrook. April 18.

Underwood, William, late of 213, High Street, Southwark, Grocer and Tea Dealer. *Alsager*, Off. Ass.; *Turner*, Mount Place, Whitechapel. April 18.

Ward, Richard George, and John Perry, Newgate Market, Meat Salesmen. *Follett*, Off. Ass.; *Young*, Warwick Square, Newgate Street, April 4.

Whittaker, John Strand, Swansea, Druggist and Commission Agent. *Miller*, Off. Ass.; *David*, Swansea. April 1.

Williams, John, Abergavenny, Monmouth, Carpenter. *Hutton*, Off. Ass.; *Nash*, 3, Albion Chambers, Bristol. April 18.

Williams, Thomas Holyland, Chelmsford, Essex, Wine Merchant. *Edwards*, Off. Ass.; *Shirreff*, 7, Lincoln's-Inn-Fields. April 1.

Winscombe, James, 4, St. Augustin's Parade, and at Saville Place, Clifton, Bristol, Boot and Shoe Maker. *Acraman*, Off. Ass.; *Peters & Co.*, Bristol. April 11.

Woodhead, Jonas and Daniel, Netherthong, near Huddersfield, York, Woollen Cloth Manufacturers. *Fearne*, Off. Ass.; *Read & Co.*, Friday Street; *Sale & Co.*, Manchester; *Richardson & Co.*, Leeds. March 28.

Woollams, John, 15, Charles Street, Manchester Square, Builder. *Turquand*, Off. Ass.; *Kerrot*, Welbeck Street. April 15.

Wright, Francis, Earl's Colne, Essex, Builder. *Whitmore*, Off. Ass.; *Bell*, Bedford Row; *Mayhew*, Coggeshall. April 8.

## PRICES OF STOCKS.

*Tuesday, April 22nd, 1845.*

Bank Stock div. 7 per Cent. . . . .	209½ a 10½ a 9½
3 per Cent. Reduced Annuities . . . . .	97½ a 1 a 1
3½ per Cent. Annuities . . . . .	100½ a 1 a 1
Long Annuities, expire 5th Jan. 1860 . . . . .	11½ a 1 a 1
Ann. for 30 years, expire 10th Oct. 1859 . . . . .	11½
Ditto . . . . . 5th Jan. 1860 . . . . .	11½
India Stock, 10½ per Cent. . . . .	278
Ditto Bonds 3 per cent. 1000l. . . . .	71s. pm.
South Sea Stock New Anns., div. 3 per Cent. . . . .	97½
3 per Cent Consols for Acct., 27th May, 99 a 8½ a 9	
Commissioners for the Reduction of the National Debt, purchased at 97½, Old South Sea Annuities.	
Exchequer Bills, 1000l., 1½d . . . . .	59s. a 7s. pm.
Do. . . . . 500l. . . . .	57s. pm.
Do. . . . . small . . . . .	57s. a 9s. pm.

## ADMISSION OF SOLICITORS.

### NOTICE.

THE Master of the Rolls has appointed Monday the 5th of May, at the Rolls Court,

Chancery Lane, at half-past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day, must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Saturday, the 3rd May.

Secretary's Office, Rolls,  
22nd April, 1845.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### House of Lords.

#### BILLS FOR SECOND READING.

Action for Debt Limitation.  
Divorce, Privy Council.  
City of London Trade.  
Post Office Offences.  
Charitable Trusts.  
Bankruptcy Oaths.

#### IN COMMITTEE.

Bail in Error Misdemeanors.

#### TO BE REPORTED.

Deodand Abolition.

#### IN SELECT COMMITTEE.

Actions on Death by Accident.

### House of Commons.

#### BILLS FOR SECOND READING.

Medical Practice.  
Roman Catholics' Relief.  
Poor Law Settlement.  
Jewish Disabilities.

#### BILLS IN COMMITTEE.

Crediton Small Debts Court.  
Manchester Court of Record.  
Clerks of the Peace.

## THE EDITOR'S LETTER BOX.

IN the heading of the case at p. 449, *ante*, *Regina v. The Justices of Hertfordshire*, the word *interested* is left out. It should be, "Proceedings at quarter sessions vitiated where magistrates interested take part in the discussion." The head note, however, which immediately follows, explains the point decided.

We regret that we cannot agree with our correspondent "A Solicitor" in regard to a recent decision under the 6 & 7 Vict. c. 73. We have conferred with several practitioners on the subject, and we are satisfied that the practice as now established is the right one for all parties.

The communications of "A Gloucestershire Subscriber," and "An Attorney," on the Justices' Clerks' Bill, shall be attended to.

# DIGESTED INDEX

TO THE

## CASES REPORTED IN VOLUME XXIX.

### AFFIDAVIT.

1. The affidavit to found a motion to discharge an attorney, in custody under an attachment for disobedience to a rule of court, must be entitled on the crown side of the court, and not in the name of the parties of the original suit. *Queen v. Weston* . . . 135

2. The jurat of an affidavit, on which a certiorari was granted to bring up an order of sessions was "sworn at B., this 8th day of February, 1844, signed W. Munton, a commissioner of the court of Queen's Bench," omitting the words "before me." *Held*, that the omission of the words "before me," was a fatal objection to the affidavit.

In the body of the affidavit there was a reference to a notice "hereunto annexed," which was, This is the notice referred to in the annexed affidavit sworn before me, this 8th day February, 1844, signed W. Munton. *Held*, that the defect in the jurat of the affidavit could not be supplied by reference to the notice. *Queen v. Inhabitants of Blosham* . 209

And see LANDLORD AND TENANT and MANDAMUS, 5.

### ANNUITY.

Where a party has given his deed and bond to secure an annuity for an immoral consideration, and an action is brought against him upon the judgment entered up on the bond, a court of equity will not interfere to stay the action or compel the delivery up of the securities, inasmuch as the party may plead the illegality of the consideration, which appearing on the face of the securities, is a sufficient defence to the action. *Smythe v. Griffin* . 191

### ARBITRATION.

1. Where a judge's order referred to the award of an arbitrator a cause and all matters in difference between the parties to the action, and also between the defendant and a third person, who by his own consent had become a party to the order of reference, and the arbitrator, instead of finding specifically on the matter

in difference between such third person and the defendant, awards damages to be paid to him and the plaintiff by the defendant, as though he had been a party to the suit, the court discharged a rule calling upon the defendant to pay the amount of the award and allocatur. *Hawkins v. Benton* . . . 331

2. *Semble*, that before a rule can be granted calling upon a party to pay the amount of an award and allocatur with the view of issuing execution under the 1 & 2 Vict. c. 110, s. 18, there must have been a personal service of the award and allocatur, and a personal award of the amount; but that under special circumstances such service may be dispensed with.

A rule nisi must be served so long before the time for showing cause that the party may have a reasonable time in which to do so; and when a rule was drawn up to show cause on the 20th November, and was not served until that day, a motion to make the rule absolute on the 25th was held premature. *Hawkins v. Benton* 155

### ARREST.

1. Though the 7 & 8 Vict. c. 96, s. 57, enacts that no person shall be taken in execution on any judgment in an action wherein the sum recovered shall not exceed 20*l.* exclusive of costs, yet it seems, that an action may be brought upon that judgment, and the defendant taken in execution thereon, if the debt with costs exceed 20*l.* *Hopkins v. Freeman* . . 253

2. *Semble*, that the 7 & 8 Vict. c. 96, s. 57, (which abolishes arrest on final process for debt not exceeding 20*l.*.) does not apply to an execution for the damages in an action of replevin, nor to the costs of an attachment issued out of the Court of Chancery.

Where the discharge of a prisoner under that act has been unduly obtained by the order of a judge, application to rescind the order must be made to the judge. *Goddard v. Neely* . 55

### ATTACHMENT.

1. An order had been made by a judge in chambers, under the 2 Will. 4, c. 39, s. 17, re-

quiring the attorney of the plaintiff to deliver particulars of the plaintiff's residence. The plaintiff furnished his attorney with a false statement, which was accordingly delivered: *Held*, that the plaintiff was liable to an attachment for a contempt, though the judge's order had not been made a rule of court. *Smith, qui tam, v. Bond* . . . 232

2. It is no ground of objection to an application for a rule absolute, in the first instance, for an attachment for nonpayment of costs on the Master's allocatur, that the rule ordering the payment of the costs and the allocatur thereon have only been served upon the party on the day when, and immediately before such application is made. *Steele v. Compton* . . . 290

#### ATTORNEY.

##### Admission.

1. J. W. B. served three years under articles of clerkship to an attorney, and subsequently became a member of an inn of court, and was called to the bar, where he practised several years. Whilst remaining a barrister, though not practising, he articulated himself again to an attorney, served two years, and was then at his own request disbarred.

*Held*, that such service, the clerk being at the same time a barrister, could not be made available for the purpose of admission as an attorney. *Bateman, ex parte* . . . 282

2. Where it was sworn that a party proposing to be admitted an attorney, gave three days before Easter Term the requisite notices for admission, &c. in Trinity Term; that he was examined in Trinity Term, and obtained the examiners' certificate of fitness, but that having thereupon accepted the situation of clerk to a certain firm of attorneys, and believing that he might be admitted in the ensuing Michaelmas Term without fresh notices, he failed to be admitted in Trinity Term, the court on a motion made early in Michaelmas Term, allowed the applicant to give the requisite notices for admission on the last day of the same term. *Udall, in re* . . . 75

3. Where an articulated clerk inadvertently omitted to enrol the assignment of his articles within the prescribed period, the court, under the 7 & 8 Vict. c. 86, s. 2, ordered the service under the assignment to be computed from the date of its execution, instead of from the time of its enrolment. *Cunningham, ex parte* . . . 211

4. The court granted leave to an attorney to be admitted without a full term's notice, when it was sworn that the applicant had since the time at which such notice would have been given, received an advantageous offer of partnership, which he would be unable to accept unless the application should be granted. *Estcourt, in re* . . . 155

##### Taxation.

5. An order of course may be obtained for taxing a solicitor's bill, although more than a month may have elapsed since its delivery, provided it have not been paid. *Gaitskell, in re* . . . 448

6. The 37th section of the 6 & 7 Vict. c. 73, enables the court, under "special circumstances," to refer an attorney's bill for taxation after verdict. *Held*, that the "special circumstances" must be some new facts which have recently come to the knowledge of the party, therefore where a party sued for costs let judgment go by default, and twelvemonths after applied to the court, they refused to interfere, though it appeared that he had a good defence to the action. *Whicker, in re* . . . 112

7. Payment of a bill of costs, for which a promissory note was given and duly paid, takes its date from the day the note was paid, and not from the day it was given—in the absence of special circumstances.

An application by petition for taxation of a bill of costs, is to be considered as made, at the latest, on the day on which the petition is answered, and not when it is served on the party or heard by the court.

*Held*, accordingly, that a petition answered on the 16th November, 1843, but not then heard, for referring for taxation a bill of costs, for which a promissory note was given on the 3rd November, 1842, and paid on the 17th; was within the twelve calendar months limited for applications for such reference by the stat. 6 & 7 Vict. c. 73.

The court will not refer a paid bill of costs for taxation, unless the petition points out not merely exorbitant charges, but charges that bear the character of fraud and imposition on the client.

Two guineas a day is a regular charge for attending on the examination of witnesses in the country,—whether by the solicitor or his clerk is immaterial.

The mere continuance of the relation of solicitor and client at the time the client paid the bill, does not imply such a pressure on him as would justify the court in referring the paid bill for taxation. *Sayer v. Wagstaffe* . . . 168

8. On a reference to the Master to tax a solicitor's bill of costs, under the 6 & 7 Vict. c. 73, and to take an account of sums received and paid by the solicitor on account of his client, the court will not include in the inquiry a sum claimed by way of set-off to be due to the client for goods and work and labour supplied by him to the solicitor. *Harrison, in re* . . . 268

9. The court will not, upon a petition for taxation, decide a question as to the effect of an agreement to pay costs.

*Semble*, That a party who petitions for the taxation of a solicitor's bill, under the 38th section of 6 & 7 Vict. c. 73, cannot complain of any charges which would be proper as against the party by whom the bill was originally payable. *Thomas, in re, ex parte Harris* . . . 370

10. Where a bill of exchange is given in payment of an attorney's bill of costs, the twelve month within which the bill of costs is taxable, dates from the time of the payment of the bill of exchange, not from the time of its delivery. *Harris, ex parte* . . . 75

11. The court for the relief of insolvent debtors has no power to tax an attorney's bill for business done in that court. *Morgan v. West* . . . . . 254

*Liability to Actions.*

12. Where an action was brought against an attorney for negligence in omitting to file certain writs pursuant to the stat. 2 W. 4, c. 39, s. 10, whereby the plaintiff's claim was barred by the Statute of Limitations, the learned judge left it to the jury to decide on the evidence given of the practice of the court, and on all the circumstances of the case, whether the defendant had been guilty of gross negligence in conducting the business, and a verdict was found for the plaintiff; *Held*, that as the question of negligence was of a doubtful kind, and could hardly be justified under the circumstances, the court granted a new trial.

The declaration alleged the negligence of the defendant to be in omitting to file the said writs according to the practice of the court, the words of the statute are that the writs shall be entered of record. *Quære*, whether the words entered of record, imply filing, so as to support the allegation in the declaration, or whether it is but a good ground in arrest of judgment.

In an action of this kind, the practice of the court, is matter of evidence, the effect of which should be submitted to the consideration of the jury. *Hunter v. Caldwell* . . . . . 89

13. A. had brought an action against B., and a judge had directed proceedings to be stayed on payment of 17*l.* by A. to B. C. the attorney for A., sent his check for 20*l.* to the defendants, who were his agents in London, directing them, out of the proceeds, to pay the sum of 17*l.* to B. The defendants retained the whole 20*l.* for money due from C. to them. B. brought an action for money had and received against them, and the jury at the trial found that the defendants received the money with a full knowledge that part was to be appropriated to pay B.'s claim: *Held*, that there was not, under the circumstances, sufficient privity of contract between B. and the defendants to support the action. *Cobb v. Beck and another* . . . . . 411

*Striking off the Roll.*

14. To support a motion to strike an attorney off the roll, on the ground that he has been convicted of an aggravated conspiracy, it is necessary to produce the record of such conviction, or an examined copy of it. *King, in re* . . . . . 413

15. The court will not call upon an attorney in the same rule to show cause why he should not be struck off the roll or answer the matters of the affidavit. Each branch of the motion must be the subject of a distinct application. *Barton v. Earl of Chesterfield* . . . . . 503

And see SOLICITOR and INTERPLEADER, 1.

**BANKRUPT.**

Where the goods of a bankrupt are wrongfully taken in execution, the assignees are not

entitled to sue the execution creditor for the difference between the real value of the goods and the produce of a *bond fide* sale: but where the goods of a private individual are wrongfully taken in execution, he is entitled to recover their full value. *Whitmore and others v. Black* . . . . . 32

**BEQUEST.**

A testator bequeathed his portraits of several ancestors (of each of whom he had only one), and of the Duke of Schomberg, of whom he had three likenesses, one being a large painting representing the Duke on horseback, in a field-marshal's dress, and troops in the back ground; the second, a half-length in oil; and the third in crayons. The will contained another bequest of pictures, cameos, &c.

*Held*, that the large equestrian painting of the Duke was a portrait, and passed with the two other likenesses under the bequest of portraits. *Leeds, Duke of, v. Earl Amhurst and others* . . . . . 228

**BILL OF EXCHANGE.**

In an action on a bill of exchange, it is a good defence, that the defendant, at the time he signed the bill, was so intoxicated as not to know what he was about, and that the plaintiff was aware of that. *Gore v. Gibson* . . . . . 272

**CERTIORARI.**

Where a rule for a certiorari to bring up certain orders made by the Town Council of Dover was obtained in Trinity Term; and the order was served on the parties on the 19th of October, and notice of an application to amend the rule was given on the 29th of October: *Held*, that the court, in the exercise of its discretion, would not permit the parties to amend their rule; and that if the certiorari was defective, the proper course was to move to have the rule for the certiorari discharged. *Queen v. Corporation of Dover* . . . . . 30

**CHARTER.**

On a caveat entered against a patent for an invention, it is the usual course for the proposed patentee to present a petition to the Lord Chancellor to discharge the caveat and affix the great seal. Where a caveat was entered against a charter of incorporation, it was held to be a more convenient course to proceed by petition than by motion. *Law Society, in re* . . . . . 447

**CONTRACT.**

To enable a party to maintain an action for goods bargained and sold for a specific chattel, which he has purchased at an auction and re-sold, it is not necessary that there should have been a delivery of the chattel to him at the time of the contract of sale, but it is sufficient that there should have been a sale of it at a fixed price, so that he might have maintained trover for it on tendering the price. *Scott v. England* . . . . . 252

**COPYRIGHT.**

The court will grant an injunction to restrain the publication, on the ground of piracy, of poems in which there is a copyright, notwith-

standing they may be published with poems of an immoral tendency, and therefore not entitled to be protected. *Moson v. Cornish* . . . 192

## COSTS.

1. A defendant pleaded several pleas upon which issue was joined, and also a plea to which the plaintiff demurred and had judgment. Afterwards the plaintiff obtained the ordinary rule to discontinue on payment of costs. The costs of the demurrer exceeded those of the discontinuance, and the master on taxation deducted the latter from the former. *Held*, that the plaintiff was entitled to have the costs of the demurrer taxed in his favour, and that the defendant might (if so advised) enter a judgment of discontinuance or bring a writ of error. *Mayor of Macclesfield v. Gee* . . . 172

2. It is not imperative on a judge who tries a road indictment, to grant a certificate for costs under all circumstances under the 95th section of the stat. 5 & 6 W. 4, c. 50.

Where on indictment was preferred against the inhabitants of a township for the non-repair of a highway, by order of the magistrates at special sessions, and the defendants were acquitted on the ground that the road in question was not proved to be a highway for carriages, and the judge who tried the case gave a certificate (under sec. 95) for the costs of the prosecution under the impression that the statute required him to do so, and that he had no discretion on the subject; the court set aside the judge's certificate, being of opinion that the 95th sec. only applied in cases where the road indicted was found to be a highway. *Queen v. The Inhabitants of Heanor* . . . 269

3. In an action of trespass for issuing execution on a judgment founded on a warrant of attorney, which had afterwards been set aside as invalid, the plaintiff is not entitled, in the calculation of his damages, to recover the costs incurred by him in an application to the court to set aside the warrant of attorney. *Holloway v. Turner and others* . . . 330

4. The 17 Geo. 2, c. 56, s. 20, requiring justices, upon proof of notice of appeal against a conviction, to hear and determine the matter of the appeal, and to award costs to either party in their discretion, does not empower the quarter sessions to enter and hear an appeal on the application of the prosecutor, notwithstanding the party convicted has failed to appear and enter his appeal after having given notice of appeal and entered into recognizances.

The quarter sessions cannot in such a case award costs to the prosecutor.

The only remedy for such costs is an application to estreat the recognizances.

*Semble*, that under such circumstances it is competent to the convicting magistrates to commit the defendant to prison in execution of the original sentence. *Queen v. Recorder of Bolton*

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See MANDAMUS, 3.

## CRIMINAL LAW.

1. Where a proceeding by way of indictment

relates wholly to a matter for which the party prosecuting could also have a civil remedy, an agreement to compromise such an indictment is not illegal.

But where the proceeding is one where the party prosecuting would have no such right, or where the indictment is in respect of two offences; one of which is wholly of a public criminal nature, an agreement to compromise is illegal, and a promise made in consideration of such agreement cannot be made the foundation of an action.

Where, therefore, an indictment had been brought for a riot and assault, inasmuch as the charge of riot was altogether one of a public nature, an agreement to compromise the indictment was held invalid. *Keogh v. Lemm*

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2. Where an indictment for conspiracy laid the offence within a county, but at a place from which no *venire facias* could properly be awarded; *Held*, that the defect was immaterial, since the 6 Geo. 4, c. 50, s. 13. *Reg. v. Gompertz* . . . 492

## DEEDS.

It is not sufficient for an attesting witness to swear that the deed to which his attestation refers was "duly executed according to law," but he must state that it was sealed and delivered by the party executing it. *Houston v. Dyson* . . . 192

## EVIDENCE.

1. Although it has been determined that the death of a party is to be presumed, if he had not been heard of for seven years, yet the evidence must be so clear that no question can be raised as to his being alive.

If the Master be directed to find whether a party who is presumed to be dead, died unmarried and without issue, it is not sufficient for him to state that the evidence laid before him does not enable him to state whether the party died unmarried and without issue. *Watson v. England* . . . 231

2. On application for payment of money out of court to a party becoming entitled on his attaining 21, the affidavit of identity must expressly refer to the certificate of baptism, if any such certificate is used.

If the application is made on behalf of a married woman, proof must be given of no settlement having been executed, although the sum in question be only 50*l*. *Karr, in re* 470

3. Depositions taken under a commission sued out by the plaintiff alone, were suppressed after publication, on the ground that one of the commissioners was the nephew and agent of the plaintiff, although the application to suppress was not made until after the witness was dead, the defendant not having precisely known the connexion between the plaintiff and commissioner. *Mostyn, Lord, v. Spencer* . . . 153

## EXECUTORS.

A testator gave a leasehold house and his residuary estate to his wife and others, (whom he appointed his executors,) in trust to permit

the wife to receive the rents and profits for life, and after her death to pay legacies; and he gave the residue to such of four persons as should survive his wife. These four agreed by deed to take the residue as tenants in common. The testator's wife was permitted by her co-executors to remain in possession of the house during her life. *Held*, that the co-executors had not thereby assented to the legacies to the residuary legatees, and that at the wife's death the leasehold was assets in their hands, and they could make a title thereof to a purchaser. *Attorney-General v. Potter and others* . 267

FORFEITURE.

A. covenanted to insure in a particular manner, premises held by him of B.; he did not literally perform this covenant, but B. was satisfied with what was done, and accepted rent up to Christmas 1842. C. afterwards came in upon B.'s title, and brought ejectment on the non-performance of the covenant to insure, laying the day of the demise after the time when he became landlord. *Held*, that the forfeiture was not waived so far as he was concerned, and that he was entitled to recover in ejectment. *Doe d. Uston v. Gladwin* . 491

HABEAS CORPUS.

When a Frenchman was brought up on habeas corpus, under 6 & 7 Vict. c. 75, from fraudulent bankruptcy committed in France, the warrant of commitment directed the gaoler to keep him in custody until he shall be discharged by due course of law: *Held*, that the warrant of commitment was insufficient, and that where a magistrate commits a person in pursuance of a special authority given him by act of parliament, the terms of the commitment must be special, and pursue strictly the authority given by the act.

The application for a habeas corpus is an application at common law. The statutes 31 Car. 2, and 56 Geo. 3, only provide means to facilitate the application. *Besset, in re* . 134

INFANT.

The court will not order a portion of an infant's fortune to be applied for his advancement, where he is only entitled as joint tenant. *Dean, H. A., in re* . 308

INJUNCTION.

1. Where a bill is filed for an injunction to restrain a lessor from proceeding in an action to recover rent of the premises demised, upon the ground of defect of title, it is not a sufficient equity confessed to justify the court to interfere on motion, because the lessor may, in another suit, have admitted his want of title, and such admission may have been introduced by amendment in the bill for the injunction. *East India Company v. Coopers' Company* . 109

2. A judgment creditor proceeded to obtain execution against the debtor's executors, before they were able to realise assets. Before the plaintiff was in a position to issue the execution—being delayed by a false plea pleaded by the

executors—a decree was obtained against them to account in a creditors' suit, and notice given to the plaintiff at law:—*Held*, that an injunction to restrain him from proceeding to execution was properly issued. *Vernon v. Thelluson* 208

3. To an action on a bond against the heir-at-law of the obligor, who died intestate, the defendant pleaded that he had no lands by descent from the obligor available for payment of bond debts. Replication, that he had; and issue joined thereon, and notice of trial given. A creditors' bill was then filed against the intestate's real and personal representatives, and a decree was pronounced for an account; notice of which decree, together with notice of motion for an injunction to stay the action, was served on the plaintiff therein; but the injunction being refused by the Vice-Chancellor, the trial proceeded to verdict: *Held*, on appeal, that the injunction ought to have issued, and that after the trial it should be issued to stay execution, the plaintiff-at-law to have his costs up to the time he got notice of the decree. *Rouse v. Jones* . 247

INTERPLEADER.

1. The court refused to grant relief to a sheriff under the Interpleader Act, where it appeared that the undersheriff had made a communication, by which the issuing of a fiat in bankruptcy against the execution-debtor had been accelerated, notwithstanding the undersheriff had been professionally concerned for certain creditors of the debtor before the writ of execution was delivered to him, and the 6 & 7 Vict. c. 73, has repealed the 22 Geo. 2, c. 46, s. 14, by which a penalty was imposed upon any undersheriff who should act as a solicitor, attorney, or agent, at any place where he should execute the office of undersheriff. *Cox v. Balne* . 271

2. Where a sheriff applies for relief under the Interpleader Act, a judge at chambers has no power to decide the matter in a summary way, unless by consent of all parties, and such consent should appear on the face of the order. But where an invalid order was made, and the parties acted under it, the court held that it was binding as an adjudication upon a matter submitted to the judge. *Harrison v. Wright* 413

JOINT STOCK COMPANY.

A. sold shares in a public company to B. By the laws of that company, the consent of the directors was required to be given before any sale of shares could be valid for the purpose of passing the property in them. A. did not procure the assent of the directors, but he did all the other acts necessary for the transfer of the shares. In consequence of the want of this assent, B. never actually obtained possession of the shares. *Held*, that he could maintain money had and received against A. for the price he had paid for these shares, and the fact that he had brought such action without first returning the documents which A. had executed in order to transfer the shares, would not pre-

vent him from recovering. *Wilkinson v. Lloyd* . . . . . 471

## JUDGMENT.

1. An affidavit in support of a rule for judgment, as in case of a nonsuit, need not state where the venue is laid, if it appear that issue was joined at such a period, that the application is not premature whether the cause be a town or a country cause. *Anslow v. Cooper* . . . . . 92

2. On the return of a writ of trial, the plaintiff may proceed to sign judgment without waiting, as in other cases, for the expiration of four days. *Gill v. Rushworth* . . . . . 195

## LANDLORD AND TENANT.

An affidavit in support of a rule under the 1 Geo. 4, c. 87, s. 1, stating that the tenancy was determined "by a certain notice to quit," instead of "by a regular notice to quit," is insufficient.

Where the affidavit makes reference to the agreement required by the statute, that the agreement itself is certified under the hand of the commissioner administering the oath, the instrument is sufficiently identified. *Doe d. Platter v. Bell* . . . . . 91

## LIBEL.

In an action of libel for imputing that the plaintiff had been guilty of embezzlement, the defendant pleaded not guilty, and a plea justifying the charge; the only question left to the jury was, whether under the circumstances the letter in which the libel was written was a privileged communication: *Held*, that, in the absence of all other evidence of malice on the part of the defendant, the fact of putting the plea of justification on the record, and not abandoning it till the time of the trial, was not alone evidence from which the jury might infer the defendant was actuated by malicious motives when he wrote the libel, and that it was no misdirection in the learned judge to refuse to leave to the jury the question of malice on such evidence. *Wilson v. Robinson* . . . . . 501

## LIEN.

Debtors abroad directed their agents in London to hold a sum of money at the disposal of their creditors, as soon as the agents should be in possession of funds, and at the same time informed the creditors of such directions; and the agents also informed him that they received such directions. The debtors afterwards consigned a ship for sale to another agent in London, and directed him to apply the proceeds to the payment of the debt; and they also informed the creditor that the ship and her freight would be available for payment of their debts in London, and his among the rest: but this agent received, by the same packet, a countermand of the direction to pay the proceeds to the creditor—

*Held*, that the creditor had not, by the correspondence, acquired a lien on the freight and proceeds of the sale of the ship. *Malcolm v. Scott and others* . . . . . 108

## LUNATIC.

1. Circumstances under which a distringas was granted to compel an appearance by a lunatic. *Banfield v. Durrell* . . . . . 13

2. A person duly found to be lunatic, having escaped from his committee and gone abroad, was required to return within the jurisdiction before the hearing of his petition to supersede the injunction.

Where a person is once duly found a lunatic, the principle on which the Lord Chancellor acts is, to require a perfectly clear case of restored intellect to be made out before he sets aside the inquisition; and on that his Lordship satisfies himself, not merely by affidavits, but by personal examination of the lunatic, who must therefore be within the jurisdiction.

When the Lord Chancellor is satisfied that residence abroad is more conducive to the lunatic's health and restoration of intellect, he will permit it, and appoint a person as joint committee to accompany the lunatic, if the proper committee is disagreeable to him. *Dyce Sombre, in re* . . . . . 25, 50

3. By stat. 9 Geo. 4, c. 40, s. 38, magistrates are empowered to make orders for the removal of insane paupers to the county lunatic asylum, and "if no such county lunatic asylum shall have been established, then to some public hospital, or some house duly licensed for the reception of insane persons."

*Held*, that under the provisions of this act, magistrates were not justified in making an order for the removal of an insane person from the county of Middlesex, to a private asylum in the county of Surrey, when there was a county lunatic asylum established in Middlesex, but in which county lunatic asylum it appeared, by the order of the magistrates, there was not room or accommodation for the pauper. *Queen v. Ellis* . . . . . 250

4. Upon the issuing of a commission of lunacy, a party who, by reason of the alleged lunatic's contracts, has such an interest as entitles him to traverse the Inquisition, will not be allowed to attend the execution of the commission by counsel, unless he submits to be bound by the finding of the jury. *Watts, in re* . . . . . 328

## MANDAMUS.

1. The executors of a will paid 10*l.* per cent. legacy duty on personal property. The will and probate were afterwards set aside in the Ecclesiastical Court, on the ground that the testator was incapable of making a will. Letters of administration were afterwards granted, and the amount of duty under the administration would be 5*l.* per cent. The court granted a mandamus to the Commissioners of Taxes, under the stat. 36 Geo. 3, c. 52, s. 37, to repay the amount of duty which had been paid beyond the sum that was properly payable under the letters of administration. *Queen v. Commissioners of Taxes* . . . . . 155

2. The Queen's prison is now substituted for the Queen's Bench and Marshalsea prisons,

and its rules and regulations are placed under the control and superintendence of one of the principal Secretaries of State.

Where a person had been confined in the Queen's prison for more than 12 months for contempt of the Court of Chancery; and where it appeared from affidavits that the allowance of food made him by the gaoler was not sufficient for his support, and he had no means of his own to support himself; and where it appeared that a memorial had been presented to Sir James Graham without obtaining any redress; the court granted a mandamus peremptory in the first instance, commanding the gaoler to make the prisoner an additional allowance of food. *Queen v. John Long* . 194

3. Where a person was removed from the office of alderman of a borough by a *quo warranto* information, and the mayor not proceeding to a fresh election within ten days, according to the 27th section of 5 & 6 W. 4, c. 76, and a writ of mandamus was applied for and granted; a rule was obtained calling on the mayor, aldermen, and councillors, to pay the costs of the mandamus, under the 1 W. 4, c. 21, s. 6, *out of the borough fund*; the court made the rule absolute for the costs of the mandamus, striking out the words, "out of the borough fund." *Queen v. The Mayor, &c. of Cambridge* . 308

4. Spirits were imported from the island of Jersey under 3 & 4 W. 4, c. 52, s. 40, and certain duties therein mentioned had been paid upon them. The section contains a proviso "That such spirits may be charged with any proportion of such duties as shall fairly counter-balance any duties of excise on the like goods, the produce of the United Kingdom;" *Held*, that these proportioned duties must be paid before the importer is entitled to demand a permit from the commissioner of excise to remove such spirits, and he cannot make such demand without a previous request being addressed to them for a permit, according to the provisions of the 2 W. 4, c. 16, sects. 5 & 6.

When a proper officer is appointed, whose duty it is to grant permits, but who acts under the orders and directions of the commissioners of excise, *quære*, whether in case of refusal to grant a permit, the commissioners are the persons against whom an application for a mandamus should be made. *Queen v. Commissioners of Excise* . 372

5. An order of removal of a pauper from K. to C. was served on the parish officers of C. in May 1844. They gave notice to try the appeal at the next sessions, but did not appear to enter the appeal or countermand the notice, and the sessions made an order on them for costs: In August the pauper was removed; whereupon the parish officers of C. gave fresh notice to try the appeal at the Michaelmas sessions. Those sessions commenced on the 16th of October. On the 17th, the appellants applied to the sessions to allow them to enter and try their appeal, which application the sessions refused. On an application for a mandamus to the jus-

tices to enter and try the appeal, on an affidavit stating these facts,—

*Held*, the affidavit was insufficient, as the court would not presume that the justices did wrong, and that it was consistent with such statements that the application to enter the appeal was not in time, according to the practice of the sessions. *The Queen v. The Justices of Warwickshire* . 502

#### MARRIED WOMAN.

1. A clause in a marriage settlement directed the interest and dividends to be paid "into the proper hands of the wife, or to such person or persons as she should, by note or writing under her hand, from time to time appoint, but not so as to dispose thereof, or deprive herself of the benefit thereof in the way of anticipation;" but the receipt clause contained no negative words: *Held*, notwithstanding the omission of such words, that the clause operated as an effectual restraint upon anticipation.

Where it is sought to charge a trustee with breach of trust, the court will, in general, reserve its declaration until further directions, when the actual amount of deficiency, if any, has been ascertained. *Harrop v. Hayward* 347

2. A deed of separation may be supported, although it do not contain a covenant on the part of a trustee to indemnify the husband against the wife's debts, provided it be shown that there was no other *bond fide* consideration upon which it was founded. The court, however, in carrying the agreement for separation into effect, will direct the insertion of the covenant, if the wife insists that it was omitted by mistake and offers to have it inserted. *Wilson v. Wilson* . 428

#### MORTGAGE.

1. A. filed his bill against B. and several other defendants, for the delivery up of the title deeds of an estate, upon which such other defendants claimed an equitable mortgage, on the ground that B., who was the solicitor of A.'s testator, had fraudulently delivered the deeds to the parties claiming the equitable mortgage. B. having put in an answer denying the alleged fraud, the plaintiff allowed the bill to be dismissed against him for want of prosecution; but the frame of the bill remained unaltered.

*Held*, that as the gist of the case was fraud on the part of B., the bill could not be sustained against the other defendants.

*Held also*, that the defendants might read the evidence gone into by them to disprove the alleged fraud, in order to entitle them to the costs of it, although the bill was dismissed without going into the case. *Frankum v. Bunney* 133

2. In a suit to redeem a mortgage, the decree directed a reference to the Master, to take an account of what was due to the defendant on the mortgage in the pleadings mentioned, and also an account of the rents and profits of the mortgaged premises received by the defendant, or by any person by his order, or for his use;



and ordered that what should be coming on the account of the said rents and profits should be applied, in the first place, in payment of the interest, and then in sinking the principal of the mortgage. The mortgage was given to the defendant's father, who had been in possession many years before his death; and it appeared upon the face of the report, that if an occupation rent were fixed, the mortgage would have been satisfied before his death. The Master, however, had calculated the amount due for principal and interest from the date of the mortgage, without making any deduction, except for a small sum received by the defendant for rent, and had found the balance, after making such deduction, still due. *Held*, that the decree not directing any accounts for rents and profits during the father's life, the Master's finding was correct. *Tinlock v. Roby* . 154

3. An assignment, by way of mortgage, by the husband, of his wife's equitable chattels real, does not preclude the wife, in a foreclosure suit, from obtaining a provision, by way of settlement, out of the mortgaged premises. *Henson v. Keating* . . . 192

4. A mortgagee in possession laid out money on alterations of the mortgaged property, without consent of the mortgagor, such alterations not being necessary repairs. *Held*, on a decree for redemption, that the mortgagee was not entitled to an inquiry as to the costs of the alterations, as the evidence showed the property was deteriorated by them, and therefore held further, that the mortgagee should account for the damage so done and pay the costs of the suit, which his conduct had made necessary. *Sandon v. Hooper* . . . 346

5. The court will not, at the instance of a defendant, appoint a receiver at the hearing of the cause, if the bill contain no prayer for a receiver, and the question is not raised by the answers. *Barlow v. Ganys* . . . 409

6. Where the proviso for redemption in a mortgage deed fixes a particular day for repayment of the money advanced, the mortgagor has no right, without the assent of the mortgagee, to pay off the amount secured before the day fixed for redeeming, although he may be willing to pay interest up to the day appointed by the proviso. *Brown v. Cole* . . . 410

#### ORDERS, CONSTRUCTION OF.

1. If a common order to amend is obtained after the time limited by the 13th order of 1831, the court will not restrain the right of the defendant to set it aside, because the error appears to have arisen from an accidental miscalculation. In calculating the time allowed by the 19th order of 1831, the rule that one day is to be reckoned inclusive and the other exclusive in computations of time, is not applicable. The time allowed by the 19th order of 1831 is to be reckoned in computing the period at which an answer is to be deemed sufficient, though no exceptions have been taken to it. *Harrod v. Gibson* . . . 53

2. The court has jurisdiction under the 45th order of 1828 to correct an error in a decree,

although it relate to a matter of substance, and the decree had been made several years before and acted on. *Ashow v. Peddle* . . . 94

3. Upon a motion for leave to enter a memorandum under the 24th order of August, 1841, it is sufficient, if the counsel state or certify that no account, &c. or other direct relief is sought against the defendant, without producing an affidavit to that effect. *Hudson v. Dampworth* . . . 134

4. Under the 60th order of 1828, the Master has power to direct what parts of any books, papers, or writings left in his office a party may inspect, without any special direction by the court. *Semble. Darby v. Duncan* . . . 171

5. Where an answer suggests that the bill is defective for want of parties, and the plaintiff does not set down the cause for argument on that objection within fourteen days after answer filed, as directed by the 39th order of 1841, the court has no power to order it to be set down after the expiration of that time. (*Kershaw v. Clegg*, Turn. & Ph. 120, explained.) *Calvert v. Gundy and others* . . . 209, 307

6. *Semble*, the 23rd order of 1842 is not applicable to the case of a party of unsound mind. *Pemberton v. Langmore* . . . 393

7. An affidavit stating that a copy of a bill had been served upon the husband and wife, by serving the copy upon the husband, in the presence of the latter at the husband's dwelling house: *Held* sufficient, upon a motion under the 24th order of 1841. *Bailey v. Threlfall* . . . 449

#### OUTLAWRY.

A rule to reverse a judgment of outlawry, on the ground that the defendant in error has not pleaded to the assignment of errors, is a rule nisi only, and not absolute in the first instance. *Greville v. Cooper and others* . . . 290

#### PLEADING, (COMMON LAW.)

1. A plea that the debt sued for had been contracted in France, and that by the French law of prescription the action ought to have been brought within five years after the accruing of the cause of action, and that more than that period had elapsed,—is not an issuable plea. *Bury v. Godwin* . . . 31

2. A judgment recovered against one of two joint contractors, is of itself, without execution, a good defence to an action against the other, and such defence is properly pleadable in bar, and not in abatement, and the plea should conclude with the ordinary verification. *King v. Hoare* . . . 331

3. To a declaration in trespass, containing two counts, one for trespass, and the other *de bonis asportatis*, the defendants pleaded, first, not guilty; and, secondly, that the goods in the declaration mentioned, were not the goods of the plaintiff. At the trial a verdict was found for the plaintiff, with leave reserved for the defendants to enter a verdict on the second plea. The defendants obtained the judgment of the court to enter a verdict on the second plea. In the following term a rule was obtained for leave for the plaintiff to discontinue

the action on payment of all costs incurred in the former proceedings, in order that a second action might be brought to try the right to the goods in question. The court refused the application under the circumstances; the general rule being, that a discontinuance will not be allowed after a general verdict, though it may sometimes be allowed after a special verdict. *Queen v. Hitchin and others* . . . 171

PLEADING, (EQUITY.)

1. To a bill charging the directors of a joint stock banking company with a fraudulent misappropriation of the assets of the company, and praying for an account against them, and that they might be restrained from acting as directors, and for a receiver of the partnership assets: *Held*, not necessary that all the shareholders should be parties. Three out of several co-plaintiffs, members of a trading co-partnership, were specially liable to the payment of certain bills, which it was alleged were accepted by them as sureties for the co-partnership; and in respect of which an injunction was sought. *Held*, that there was no misjoinder. *Deeks v. Stanhope* . . . 10

2. A strong case must be made to induce the court to admit evidence in a cause after the hearing and decree.

But where it appears that a material piece of evidence contained in a resolution approving of an agreement which the plaintiffs sought to enforce, was withheld by the defendants, and not discovered by the plaintiffs until after the hearing, the court, in its discretion, granted leave to file a supplemental bill in nature of a bill of review. *Sheffield Canal Company v. Sheffield and Rotherham Railway Company* . . . 86

3. Where a bill is filed for specific performance of an agreement for a lease, and to restrain proceedings in an ejectment brought to recover possession of the premises agreed to be demised, a demurrer for want of equity will not lie because the bill does not pray an injunction against the party actually interested in the property, if the bill contain sufficient allegations to show that he is making use of the names of the parties in the ejectment sought to be restrained. *Gibson v. Chaytor* . . . 88

4. On a bill to have a policy of insurance delivered up on the ground of fraud: *Semble*, it is not necessary to offer to repay what has been paid by way of premium.

A prayer to be relieved in such manner as the court shall direct, held to imply such an offer.

The bill was filed by three directors of the insurance company, who had signed the policy, on behalf of other parties interested therein, except the defendants. *Held*, that it was not necessary to make the directors, as a board, parties. *Barker v. Walters* . . . 132

5. A bill was filed by the committee (or curator) of a lunatic, (a foreigner,) in the names of both, against a person in whose name the lunatic had vested a sum of money in the English funds, and the parties beneficially interested. Upon the death of the lunatic, before

the cause was heard, the defendant obtained probate of his will, and then applied for an order on the surviving plaintiff to revive the cause or diminish the bill: *Held*, that the plaintiff having no interest, the court had no power to make the order. *Toledo v. Vieta* . . . 369

PRACTICE, (COMMON LAW.)

1. The rule of H. T. 2 W. 4, pl. 2, requiring an indorsement of the amount of debt and costs upon process served for the payment of any debt, only applies to actions for the recovery of a debt arising between the parties by way of contract, and does not extend to *qui tam* actions. *Hobbs v. Young* . . . 111

2. A defendant in custody under a *capias* issued by order of a judge, is not entitled to be discharged by reason of the plaintiff not having declared against him within 12 months, but the proper course is to proceed by *non pros*. *Turner v. Parker* . . . 156

3. Where a writ of *fi. fa.* was executed to the amount of the levy paid under protest on the 7th; a motion on the 18th November to set aside the proceedings, on the ground that the defendant had never been served with process in the action, was held too late. *Cook v. Peace* . . . 195

4. When the plaintiff in an action applies to a judge at chambers to amend the record, and the judge makes an order to that effect, at the same time directing the costs of the application to be paid by the plaintiff to the defendant; *Held*, that the defendant after the receipt of the costs is not in a situation to apply to the court to set aside the judge's order on the ground that he had no authority to make such order. *Anon* . . . 349

5. Where a writ of summons described the defendant as of "Wilson Street, Finsbury, in the City of London," and it appeared by affidavit that Wilson Street was in the county of Middlesex, the court set aside the writ upon the application of the defendant, although he had not been personally served. *King v. Hopkins* . . . 394

6. Where, in vacation, the defendant's goods are seized under an irregular writ, and an unsuccessful application to set aside the judgment and execution is made at chambers, a motion on the 15th day of the ensuing term to set aside the proceedings, is out of time. *Austin v. Darcy* . . . 413

7. By a rule of court, the records in cases which stand over from one sitting to another must be regularly resealed previous to the sitting to which they stand over, or in default thereof the cause will not be heard. Where a cause appeared in the list for the third sittings after term, as an undefended cause, and on the day appointed, counsel appeared for the defendant and requested that the cause might be postponed, as he intended to call witnesses; and on the day appointed at the sittings after term the cause was not taken, but it was taken on one of the following days, and a verdict passed for the plaintiff: the court in this term

made a rule absolute to set aside that verdict for irregularity, on the ground that the record had not been resealed. *King v. Tress* . 429

## PRACTICE (EQUITY.)

1. Where leave is given to move upon short notice, the notice of motion must express upon the face of it that the motion is to be on short notice. *Read v. Pyke* . 171

2. Although by the rule of the court money will not generally be paid under a bequest which would include after-born children, the tenant for life being in advanced years, except upon recognizances being given to account, in case of any children being born subsequently; yet, where the amount is small, it is in the discretion of the court in such cases to dispense with the recognizances, and to require merely the personal undertaking of the parties to account as the court shall direct. *Brown v. Pringle* 249

3. Where a defendant, who is out of the jurisdiction, has employed a person, who is within the jurisdiction, to act for him in the subject matter of the suit, the court will order service of subpoena to appear and answer, and also of an injunction, on that person to be good service on the defendant.

*Semble*, that if the fact of agency is to be derived from the admissions of the alleged agent to the plaintiff's solicitor, an affidavit ought to be made by the latter, denying collusion with the former. *Murray v. Vibart* 281

4. A defendant allowed, after the cause is set down for hearing, to put in a supplemental answer to correct an error of date recently discovered to have been untruly stated in his former answers, although the correction makes the answer a perfect legal defence to a just demand. In such a case the defendant must pay all the expenses caused to the plaintiff by the supplemental answer. *Fulton v. Gilmonr* 392

5. Where an order is made for the payment into court of a sum specified in the order within a limited time after service of a writ of execution to be issued in pursuance of the order, it is not necessary to obtain a short order for payment previously to obtaining the writ of execution.

If several orders have been made, which are sought to be set aside for irregularity, it is not sufficient to refer to them generally in the notice of motion, but they must be particularly specified. *Turnbull v. Turnbull* . 394

6. A party who is in contempt for non-payment of costs, is entitled, notwithstanding, to file and set down exceptions to the report, this being deemed by the court as purely an act of resistance.

Motion to take the exceptions off the file refused, with costs. *Morison v. Morison* . 411

7. An executor will not be ordered to pay into court a sum of money admitted by his answer to have been received by him, if he swear that he has paid it to his solicitor towards the costs of the suit, and it appear that

the amount is not unreasonable, although it may have been paid after the institution of the suit, and the bill charges that he is a defaulting executor. *Anon* . 501

## PRISONER.

1. A party who has been in prison in execution for twelve calendar months for the nominal damages of 1s. and for the costs in ejectment, is entitled to his discharge under the 48 Geo. 3, c. 123, s. 1. *Doe d. Barker v. Roe* . 473

## PRODUCTION OF DOCUMENTS.

1. On motion for the production of an opinion, taken fifteen years ago by *cestui que trust*, after a dispute had arisen between him and his trustee, which was now the subject of an original and cross suit, it being admitted by the answer of the *cestui que trust* that such opinion was in his possession: the court held it to be privileged. *Woods v. Woods* . 72

2. The master of a ship (which had foundered) was sent to India by the owner and his solicitor, to collect evidence there in support of an action brought by the owner, on a policy of insurance against the underwriter, who afterwards filed a bill of discovery in aid of his defence,—

*Held*, that the letters sent home by the master so employed, to the owner and solicitor, were privileged communications, falling within the established rule. *Steele v. Stewart* . 3130

3. It is not a sufficient answer to a motion for the production of documents, admitted by a defendant to be in his possession, that the title of the plaintiff is denied.

In order to dispense with the usual order for producing and depositing documents at the office of the Clerk of Records in London, and to obtain permission that they shall be inspected at the place of business of the defendant in the country; it must not only appear upon affidavit that they are wanted in the country, but that they are in constant use there. *Allen v. Rawson* . 347

## PROHIBITION.

A parish consisted of two townships or hamlets; a church rate was made upon both townships, and an inhabitant of one of them refused payment of the rate, on the ground that the hamlet in which he resided was a separate and distinct parish. For his refusal to pay the rate he was libelled in the Ecclesiastical Court. On an application for a writ of prohibition, the court was of opinion that the rule should be made absolute for the complainant to declare in prohibition, though the nature of the case was not such as to require the rule for the prohibition to be absolute at once. *Rimington v. Dally* . 110

## QUARTER SESSIONS.

A court is improperly constituted where any of the members interested in the decision take part in the proceedings.

Where, on an appeal to the quarter sessions

against an order made by two magistrates, under the 4 & 5 Vict. c. 59, s. 1, for payment by a parish surveyor of a sum of money to the commissioners of a turnpike trust, the sessions confirmed the order; and it appeared that one of the magistrates on the bench was a mortgagee of the turnpike tolls, and that another was one of the magistrates who made the order, and therefore a respondent in the appeal, but who left the court before the case was decided; this court quashed the order of sessions. *Queen v. Justices of Hertfordshire* . . . 449

#### SOLICITOR.

1. An application that a defendant may be brought to the bar of the court for the purpose of having a solicitor appointed to put in his answer, is irregular. The proper application is, that the defendant may be brought up for the purpose of taking the bill pro confesso, when it will lie on him to make application for the appointment of a solicitor. *Barton v. Mills* . . . 347

2. The settlement of a bill of costs on the transfer of a mortgage, without its having been previously submitted for examination, is such a special circumstance, within the meaning of the act 6 & 7 Vict. c. 73, as calls upon the court to order it to be taxed after payment.

If there should appear to the court, from a statement of the charges in the bill sought to be taxed, that some of them are below what would be allowed on taxation, the court will give the party whose bill it is the liberty of making any additions, before the Master, that he can fairly claim. *In re Tugwell* . . . 489

3. If a bill of costs be delivered at a period when the items in it cannot be examined or discussed, and a material item is objected to, which is apparently an overcharge, these are such special circumstances as warrant the court in making an order, under the 37th section of 6 & 7 Vict. c. 73.

The court will form its decision upon the circumstances which bear upon the act, and not with reference to the decisions in cases heard previously to its passing. *Ex parte Wells* . . . 500

4. A firm of solicitors who had discharged themselves from acting for a certain party, required to produce and leave in the Master's office, various title deeds and other documents mentioned in the schedule to an answer of that party put in by them; though these documents had come into the possession of a former partner of the firm, long before the commencement of the suit in which the answer was put in, and were subject to a lien for taxed costs due to that partner. *Gregory v. Cresswell* . . . 490

#### See ATTORNEY AND INTERPLEADER.

#### STATUTE OF LIMITATIONS.

The court will amend a writ of summons by adding the name of another plaintiff, where it appears that the debt will be barred by the Statute of Limitations unless the amendment be allowed. *Brown v. Fullerton* . . . 291

#### TIMBER.

Where timber is cut during the life of a tenant for life impeachable for waste, the next tenant for life, if unimpeachable for waste, is entitled to the produce. *Phillips v. Barlow* 89

#### TRADE, RESTRAINT OF.

The defendant covenanted not to carry on business as a perfumer within the cities of London and Westminster, or within 600 miles from the same: *Held*, that the contract was valid as to London and Westminster, though void as to other parts. *Green, executor of Gosnell v. Price* . . . 452

#### TRIAL.

1. Though it is a rule, that the affidavits of jurors cannot be received for the purpose of impeaching or supporting their verdict, yet where a rule nisi for a new trial has been obtained on affidavits imputing personal misconduct to individual jurors, the affidavits of these jurors, in answer to the charge, are admissible in showing cause against the rule. *Standwick v. Watkins* . . . 232

2. Where a cause is to be tried before the sheriff on a writ of trial, *semble* that the proper course is to draw up the order for the writ of trial before the issue is delivered.

*Semble* that it is an irregularity to deliver the issue with blanks for the tests and return of the writ of trial. *Dennett v. Hardy* . . . 430

3. On a motion for a new trial of a cause tried before the under sheriff, at which counsel did not attend, the ground of the application being that the verdict is against evidence, it is not necessary to produce an affidavit stating the cause or nature of the application. *Kennings v. Seraman* . . . 451

4. While a cause was in the list for trial, the defendant consented to a judge's order for payment of debt and costs on a certain day. Before that time he obtained fresh evidence in support of his defence. *Held*, that the court had jurisdiction to set aside the order and let the defendant in to try the cause. *Ward v. Simeon* . . . 493

#### VOLUNTARY SETTLEMENT.

The court will not give effect to a voluntary assignment to a trustee of a sum due upon mortgage, or of a sum due upon a policy of insurance, where no notice was given to the office, though the deed of assignment be duly executed and delivered up to the trustee. *Ward v. Audland* . . . 426

#### VENDOR AND PURCHASER.

1. Upon motion for an injunction by an alleged purchaser, to restrain the registered owners of a ship from interfering with her, her cargo, or freight, a court of equity has power to take possession thereof, until the validity of the sale has been decided at law.

*Semble*, that a party who claims as purchaser of a vessel to which he is found to have title,

cannot claim a lien upon her for money expended in her repair.

*Quere*, whether equity can assist a party in removing one name from, and putting another upon, the register?

Practice of the court in directing issues, or leaving parties to their legal remedy, and in imposing terms upon them. *Ridgway v. Roberts*

11, 29

2. A purchaser offered to accept a certain lot of land, which proved to be smaller than had been represented in the conditions of sale, if the vendor's solicitor would then make a declaration as to the title. This the solicitor said he could not do until he had examined a certain document: when he had made this examination, he offered to make the required declaration. *Held*, that the plaintiff might, nevertheless, refuse to accept the lot. *Malden v. Tyson* . . . . . 72

3. The purchaser at a sale by auction will not be allowed to repudiate his contract, if the conditions of sale state that persons bidding shall not be allowed to retract their biddings, notwithstanding he may have countermanded his bidding immediately after the lot was knocked down to him, and informed the auctioneer that he was bidding for another.

The costs of affidavits filed in support of, or in opposition to, a motion are allowed, although not used, unless they should be tendered, and the court should refuse to allow them to be read. *Freer v. Rimmer*

349

#### WILLS.

1. A testator exhorted and entreated a party, to whom he had absolutely bequeathed all his property, to make ample provision, by deed or will, for his only daughter and grand-daughter, and expressed his confidence and belief that the donee would do so. *Held*, not sufficient to create a trust in favour of the grand-daughter. *Wisek v. Britton* . . . . . 268

2. Where a will contains positive directions for sale, the court will not, upon the ground of sacrifice, discharge an order for sale; but under special circumstances, will direct a reference to the Master, to ascertain whether the property can be sold with advantage to the parties beneficially interested. *Crombie v. Maclean* . 282

3. A testatrix, by her will dated in 1832, gave 200*l.* three and a half per cents, stated to be standing in her name, to her nephew and niece, with benefit of survivorship. The 200*l.* remained invested in the testatrix's name until May 1836, but she had also purchased other sums by which the amount became increased to 480*l.* In August 1836 she sold out the whole 480*l.*, and invested 397*l.* 12*s.* 6*d.*, part of the produce, in the purchase of 25*l.* per annum long annuities. In October 1836 she made another will, which contained a similar statement to that contained in the first will, as to her being possessed of 200*l.* three and a half per cents, and also a similar bequest of it to her nephew and niece, although she had no stock except the long annuities. The niece died in infancy. *Held*, that the nephew was entitled to the long annuities. *Wright v. King* . 371

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